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ABSTRACT

Denying the widely held contention that tenure is an outworn relic no longer necessary in the modern academic world and that it serves principally to provide lifelong job security for incompetent faculty members, the Commission concluded that the tenure system "is indispensable to the preservation of academic freedom, while academic freedom is indispensable to educational excellence." Their report surveys tenure and its rationale in general before examining its workings at the University of Utah. At Utah, 3 aspects are explored: pre-tenure review, standards for tenure acquisition, and post-tenure review. Possible alternatives are investigated but rejected as unworkable and ineffective. The conclusions contain recommendations for a Code of Faculty Responsibilities, establishment of a program of career development, and improved complaint procedures. A draft of the proposed Code is included. In the course of the study, the Commission reviewed the literature, met with and solicited comments from groups and individuals on and off campus, and administered an extensive faculty questionnaire. The appendices contain questionnaire results, faculty statistics on tenure, and a legal memorandum on court decisions relating to academic freedom. There are 8 exhibits drawn from pertinent published material. (JS)

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FINAL REPORT

COMMISSION TO STUDY TENURE

UNIVERSITY OF UTAH

May 1971

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
OFFICE OF EDUCATION

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- Exhibit F. Guide to Retention and Tenure--February 3, 1969
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- Exhibit H. University Tenure Advisory Committee: Procedures for
Reviewing Recommendations for Termination of Faculty
Members without Tenure

May 19, 1971

UNIVERSITY OF UTAH
COMMISSION TO STUDY TENURE*

Final Report

I. SUMMARY OF REPORT

The system of academic tenure for professors at colleges and universities

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- * The Commission to Study Tenure was appointed by the Executive Committee of the University Senate of the University of Utah in November 1970. Membership consisted of 7 faculty members (Sydney W. Angleman, Emeritus Professor of English; B. Gale Dick, Physics; James L. Clayton, History; Susan Gustavus, Sociology; Don Hanson, Political Science; Leonard D. Spicer, Chemistry; and Arvo Van Alstyne, Law), three student members (Steven Gunn, graduate student in Law; Manus Monroe, graduate student and teaching assistant in Chemistry; and Cynthia Myntti, undergraduate senior student in Political Science); and two public members (Lorin N. Pace, attorney; and David K. Watkiss, attorney). Staff assistance was provided by Peter Keating. Due to pressure of professional obligations and legislative business during the 1971 General Session of the Utah Legislature, of which he is a member, Mr. Pace was unable to participate in the work of the Commission; accordingly, this Report represents the views solely of the other eleven commission members.

The Commission commenced the holding of regular meetings in December 1970, continuing on a weekly or bi-weekly basis until the middle of May, 1971. During these meetings, the relevant published literature relating to tenure was discussed, and extensive oral statements were received from highly qualified witnesses drawn from within as well as outside the University, including representatives of the University of Utah Chapter of the American Association of University Professors, and the University of Utah Committee on Academic Freedom and Tenure. Written comments relating to the tenure system were solicited from student advisory committees, faculty members, and members of the general public, with many helpful replies being received. Through the auspices of the University's Office of Institutional Studies, an extensive questionnaire was distributed to the faculty and the returns tabulated. The University Administration cooperated fully in furthering the Commission's work, but at no time attempted in the slightest way to influence its deliberations or conclusions.

The Commission wishes to record its profound regret that Dr. Sydney W. Angleman, who served with great dedication as a member of the Commission, passed away shortly before this Report was concluded. His unflagging good cheer, wise insight, and helpful counsel at all times during the Commission's work was of inestimable value. Although Syd did not live to see the final draft of this Report, and thus bears no responsibility for its imperfections, we willingly acknowledge that whatever of value may be found herein is, in substantial degree, a reflection of his devotion to the improvement of higher education and the advancement of human freedom.

both within and outside the State of Utah is under vigorous attack from many quarters. Criticism of the system tends to emphasize the belief that tenure is an outworn relic of the past which is no longer necessary in the modern academic world, and that it serves principally to provide lifelong job security for incompetent faculty members.

It is submitted that most, if not all, of this criticism is misplaced, however sincere and well-intentioned it may be. The tenure system, we are convinced, is indispensable to the preservation of academic freedom, while academic freedom is indispensable to educational excellence. To eliminate the long-established and deeply rooted tradition of tenure for university faculty members, without simultaneously providing equally effective institutional means for protecting academic freedom would, in the Commission's judgment, be a tragic mistake with grave consequences for higher education as well as for the general public welfare. None of the alternatives to tenure which have been proposed offer reasonable assurance that they would prove workable and effective in this regard.

The Commission has therefore concluded that the tenure system at the University of Utah should be retained, but that efforts should be undertaken to reduce and to eliminate, as far as may be possible, any justification for valid criticism of the system or its practical operation.

The Mythology of Tenure

Upon careful consideration of the available evidence, the Commission is convinced that much of the current criticism of academic tenure reflects uncritical acceptance of the mythology which tends to permeate discussions of tenure both on and off the campus. We have concluded that the tenure system at the University of Utah operates reasonably well -- although admittedly not perfectly -- in light of its actual objectives, procedural requirements, and decisional standards. The opposing view advanced by some critics seems to be based upon one or more common misconceptions or myths relating to tenure and its implications:

(1) The prevailing mythology describes tenure as a special privilege uniquely enjoyed by college and university faculty members. In fact, some form of tenure is characteristic of most employment relationships in our society, whether described as a "merit system" for government employees, a seniority or job security plan for employees covered by a collective bargaining contract, or a profit-sharing and stock-option program for business executives. Even the independent learned professions (e. g., medicine and law) enjoy a closely analogous form of professional tenure, in that a professional license to practice can only be revoked or suspended when good cause to do so is shown to exist. The essential principle of the tenure system is that the university professor cannot be dismissed from his position except upon a showing of adequate cause. This principle represents a rule of fair play and justice which is far from unique, and which cannot accurately be criticized as a special privilege.

(2) The prevailing mythology claims that a professor may acquire tenured status by mere passage of time in his position, without regard for his professional competence or academic responsibility. In fact, it is not easy for a new faculty member to acquire tenure; he can do so only by demonstrating his qualifications over an extended period of years. At the University of Utah, under current procedures, each nontenured professor is systematically reviewed annually during his probationary period (ordinarily five years in length) to determine whether, on the basis of teaching effectiveness, scholarly achievement, and university service, he should be retained in the employ of the University. Tenure may be achieved only if the professor survives these annual retention reviews and finally receives an affirmative recommendation from the appropriate review committees and administrative officers that he be granted tenured status. The burden of demonstrating that he has the qualifications for retention and tenure is squarely upon the individual himself. A significant number of faculty members are dismissed during their probationary period and thus fail to achieve tenure. Others leave the University voluntarily as they perceive the unlikelihood that they will obtain the requisite favorable recommendation. At the conclusion of the probationary period, a professor who fails to achieve tenured status must be dismissed; a candidate for tenure must go "up-or-out." University policy forbids extension of an academic appointment beyond the probationary period for nontenured professors.

(3) Current mythology assumes that nearly all University faculty members enjoy tenure. In fact, when all instructional personnel are taken into account without regard for rank, the number (461) of tenured faculty members at the University of Utah, as of February, 1971, amounted to only 19% of the total (2,434). See Appendix II. When teaching assistants are excluded 24% of all faculty members at the University hold tenured positions. And even when attention is directed solely to regular teaching appointments in professorial ranks -- thereby disregarding all faculty members (e.g., lecturers, instructors, clinical and research professors, etc.) not holding appointments in tenure-producing ranks -- the figure increases only to 51% -- slightly over one-half.

(4) Current mythology contends that a faculty member with tenure cannot be dismissed from his position. In fact, the tenure system does not preclude the dismissal of (or imposition of lesser sanctions upon) a tenured faculty member for reasons of academic incompetence or irresponsibility. Nor does tenure prevent the University from dismissing a professor because of bona fide financial exigency, discontinuance of a program or department of instruction, or medical disability. While it is true that the formal mechanics of the tenure-dismissal procedures -- involving the service of a formal statement of charges and formal hearings thereon by the University Committee on Academic Freedom and Tenure -- are seldom used, tenured faculty members have been removed from the University's employ through informal methods leading to voluntary resignation by a professor who is

faced with the alternative of formal dismissal proceedings. There is some evidence suggesting that disciplinary measures are invoked against tenured faculty members with less frequency than may be warranted by the facts; but such inertia is not attributable to defects inherent in the tenure system.

(5) The mythology assumes that tenured professors enjoy life-long job security without any corresponding obligations to maintain professional competence or adhere to acceptable standards of academic responsibility.

In fact, as already noted, tenured faculty members may be dismissed from the University of Utah if they fail to meet their responsibilities to the University, its students, and to the public. Under applicable regulations (Board of Regents Regulations, Chap. IX, § 9, reprinted in attached Exhibit A), every tenured faculty member has a duty to maintain personal competence "in the performance of his duties as a teacher and faculty member" and to refrain from conduct which "demonstrates that the faculty member lacks the ability or willingness to meet his responsibilities to the University." The authoritative "1940 Statement of Principles on Academic Freedom and Tenure" promulgated by the American Association of University Professors (reprinted in attached Exhibit C), and applicable to the University of Utah, specifically notes that the professor has a "special position in the community" which "imposes special obligations." A comprehensive guide to these special obligations is set forth in the AAUP's "1966 Statement on Professional Ethics" (reprinted in attached Exhibit D).

Specific Reforms Recommended

When the misconceptions relating to tenure are dispelled, it emerges more clearly as an institution calculated, in principle, to promote academic freedom with accountability. Its imperfections reflect inadequacies in practical administration of the system by fallible human beings, rather than inherent systemic flaws.

The Commission is persuaded that substantial improvements in the operation of the tenure system can be achieved, without impairing academic freedom. To this end, specific reforms in three related areas should be considered:

First, the Commission recommends that the University initiate proceedings leading to the promulgation of a Code of Faculty Responsibilities. As noted above, faculty obligations are presupposed by the tenure system; but the exact content of such obligations is largely undefined, except in general terms, and appears to be imperfectly understood by some faculty members as well as many private citizens. A code of responsibilities, specifying acts and omissions that would constitute grounds for disciplinary charges against faculty members, would, in the Commission's judgment, contribute significantly to better understanding and enforcement of faculty obligations.

Second, the Commission recommends the inauguration by the University of a comprehensive career development program for all faculty members. In this connection, efforts should be made to establish adequate methods of post-tenure review and evaluation of faculty teaching effectiveness and

scholarly productivity. While the University should never tolerate incompetence on the part of any members of its faculty, it should be equally engaged in providing every faculty member with incentives and institutional aids to promote a sustained individual quest for excellence in academic pursuits.

Third, the Commission recommends that appropriate steps be undertaken to develop more effective and widely visible means by which alleged violations of faculty responsibilities can be efficiently and fairly screened, evaluated, and adjusted. While the Student-Faculty Relations Committee appears to be discharging this function in a limited degree at the present time, its effectiveness could be significantly improved by clarification of committee jurisdiction and procedures, and by providing full-time staff assistance in the person of a university complaint officer (or "ombudsman"). We believe maximum effort should be directed toward amicable resolution of student grievances involving faculty members -- which often represent a mere misunderstanding or breakdown in communications -- by informal and persuasive means. A strengthened procedure for investigating and processing complaints would also assist materially in the effective administration of the proposed Code of Faculty Responsibilities.

Tenure With Accountability

The quality of a University depends largely upon the commitment of its faculty and staff to the achievement of excellence in pursuit of

educational objectives. Intellectual aspirations, however, are not enough; sustained public support for the University requires that its institutional commitment be communicated by word and deed to students, taxpayers, and public officials alike.

Properly understood and effectively implemented, the system of academic freedom and tenure with accountability, as described in the pages of this Report, can play an indispensable role in demonstrating that the University of Utah shares the concerns of its several constituencies and is determined to protect the basic values of educational freedom while, at the same time, eliminating from the campus, so far as humanly possible, all vestiges of academic incompetence and irresponsibility.

Abolition of tenure would, in our considered judgment, be perceived by the University as well as by the wider academic community as a radical and improvident change in the educational climate that would make this goal impossible to achieve. Moreover, the available evidence strongly suggests that elimination of tenure would encourage divisiveness and polarization of the campus community and lead to the substitution of collective bargaining and confrontation politics for the orderly and well-established personnel procedures now prevailing. These consequences, in the judgment of the Commission, could well drain academic freedom of all meaningful content, to the tragic detriment of students, faculty, and citizens generally.

II. THE TENURE SYSTEM AND ITS RATIONALE:

A GENERAL PERSPECTIVE

There is little doubt that the system of tenure for college and university professors is widely misunderstood both on and off the campus. It is sometimes disparaged by its critics as a unique system of employment security which confers significant benefits (e. g., assured lifelong employment) upon faculty members, while requiring few, if any, reciprocal obligations. Moreover, some would argue, the system functions in a routine and undiscriminating way that tends both to reward and protect academic incompetence and indolence. These criticisms, although apparently widely shared, tend to ignore both the purposes of the tenure system, and its practical operation, and thus represent a distorted and simplistic view of a complex institution.

Tenure, as a means of promoting stability of employment expectations, is by no means either unusual or unique to the campus; it exists in one form or another in many kinds of contemporary occupational relationships. The great bulk of federal employees, for example, are governed by a system of tenure known as "civil service". Most state and county employees below the highest policy-making offices are protected by statutory tenure provisions that constitute an integral part of the "Merit System".¹

1. See Utah Code Annotated, tit. 67, ch. 19 (State Merit System); Utah Code Annotated, tit. 17, ch. 33 (County Merit System).

Provisions relating to tenure are often found in collective bargaining contracts between employers and labor unions, while economic and humanitarian considerations alike tend to supply the basis for closely analogous practices in other employment relationships. A common theme runs through all of these forms of tenure: When employment is extended beyond a trial or probationary period, during which the merit and fitness of the candidate has been assessed, the employee will not thereafter be dismissed from his position except for "adequate" or "just" cause.²

Although significant analogies exist between academic tenure and other forms of employment security, it must be emphasized that academic tenure is not primarily a device to assure continued employment for faculty members. Nor is it designed, like the civil service and merit systems that apply to most government positions, to eliminate the evils associated with the "spoils system".³ As we shall point out, academic tenure is intended, above all other considerations, to provide a means of safeguarding the public welfare by protecting academic freedom. An adequate assessment of the system of academic tenure thus presupposes understanding of the meaning and significance of academic freedom.

While it is difficult, if not impossible, to formulate an unambiguous

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2. See, e.g., A.A.U.P., 1940 Statement of Principles on Academic Freedom and Tenure, reprinted in Exhibit C. Compare H. E. Kaplan, *The Law of Civil Service* (N.Y. 1958), pp. 63, 256-76.
 3. See A. Hoogenboom, *Outlawing the Spoils* (1961).

and completely satisfactory definition of academic freedom, the basic interests to be protected and their relationship to university tenure can be identified in general terms.⁴ The central concern of academic freedom is the promotion of the common good by ensuring absence of, or protection against, external and institutional influences that may inhibit scholarly freedom to seek, expound, and disseminate ideas. Freedom in research, freedom in teaching, freedom in publication, and freedom in learning are all postulated as indispensable to the ultimate objectives of the educational institution -- the advancement of truth, strengthening of cultural integrity, cultivation of critical intelligence, and improvement in the quality of personal and social life of the community at large. "Conceived positively, academic freedom is the encouragement to adventurous, creative, and innovative thought, the condition and inspiration for genuine intellectual and artistic achievement."⁵

Academic freedom exerts a significant role in the general system of freedom of thought and expression safeguarded by Constitutional limitations;⁶ but it is clearly much more than that. The Bill of Rights postulates minimum protection against governmental interference with intellectual

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4. The literature on academic freedom is very extensive. In the present statement, we have drawn heavily upon Machlup, On Some Misconceptions Concerning Academic Freedom, in L. Joughin, ed., Academic Freedom and Tenure (Madison, 1969), p. 177, and S. McMurrin, Academic Freedom, in Encyclopedia of Educational Research (4th ed.) p. 1.
 5. S. McMurrin, op. cit., p. 2.
 6. See T. I. Emerson, The System of Freedom of Expression, ch. 16 (N. Y. 1970).

freedom. But researchers, professors, and students must be protected as well from private and organizational pressures, whether they emanate from outside or from within the campus, if they are to perform their respective functions with independence and vigor. ⁷ Uninhibited exploration of ideas cannot thrive in an atmosphere of intimidation and potential reprisal against ideas which are bold, challenging, and unpopular. Yet society's commitment to the educational enterprise necessarily demands that the university assume the responsibility for continued examination and appraisal of the validity of accepted values, established theories, and traditional practices.

The central function of the university -- a role which is inherent in its educational objectives -- may at times create tensions and conflicts between the academic community and discrete elements within the larger community which it serves. Viewed in this context, academic freedom is seen as a safeguard which society has devised in order to protect its long-range interest in free critical inquiry from the chilling effects of censorship of and reprisal against unconventional thoughts and ideas. The university cannot perform its essential functions if its faculty are constrained to seek either the safety of silence or the ambiguity of indecision in matters of intellectual concern. Academic freedom embodies society's rejection of coerced conformity, and its acceptance of intellectual diversity as a primary instrument of educational policy.

7. The Commission's faculty questionnaire disclosed a fairly widespread body of belief that attacks upon academic freedom are frequent. See Appendix I. Tables 8, 9, 10, 12.

The principle of academic freedom necessarily implies corollary responsibilities upon those who enjoy it to employ that freedom in ways that advance its objectives. Incompetence, indolence, intellectual dishonesty, serious moral dereliction, arbitrary and capricious disregard of appropriate standards of professional conduct -- these and other grounds are fully recognized as "adequate cause" for dismissal or other disciplinary sanctions against faculty members, infringing upon academic. In affirmative terms, it is beyond serious question that faculty members carry a weighty burden of responsibility to students, colleagues, university, and society to pursue their assigned professional tasks with dedication to truth, intellectual integrity, and appropriate restraint. In addition, since academic freedom, like most freedoms, is capable of being abused by those who enjoy its benefits, the faculty has a collective obligation of the highest order to take effective action against those individuals within its ranks who are derelict in discharging their professional responsibilities. On the other hand, the faculty has an equally important collective obligation to resist as vigorously as may be necessary all attempts, from whatever source, to violate the principle of academic freedom. Simply stated, academic freedom and academic responsibility are interdependent: neither can long exist without the other.

Upon all of the evidence and arguments available, the Commission concludes that the preservation of academic freedom at the University of Utah is indispensable to fulfillment of the essential purposes for which the University was established. To depart from this long and honored tradition

of the University -- even in the slightest degree -- would be a tragic mistake. We are convinced that any diminution in academic freedom, or any changes in academic personnel policies and practices that could reasonably be construed as such, would tarnish the reputation and stature of the University, impair faculty recruitment efforts, lead to an exodus of existing faculty, bring about a gradual but inexorable deterioration of educational effectiveness, and lead inevitably to the politics of confrontation as a remedy for perceived grievances.⁸ The recognized commitment to academic freedom on this campus must therefore be retained, reaffirmed and strengthened, as a central theme of University policy.

It has been suggested that a commitment to academic freedom does not necessarily require a commitment to the tenure system. There can be little doubt that academic tenure, in its inception and underlying theory, was developed primarily as a form of institutional protection for academic freedom. It has taken different forms at different times and places, incorporating many varieties of procedure. Tenure is sometimes sanctioned as a statutory right, sometimes upheld as a contract obligation, and in other instances observed loosely on the basis of tradition, moral commitment, or informal understanding. Regardless of form, most contemporary tenure systems have a common core of meaning based principally on the policy statements, guidelines, and published investigatory reports of the American Association

8. These conclusions, which are based in part upon testimony and written communications received by the Commission, are supported also by the faculty questionnaire responses. See Appendix I, Tables 11, 12, 13, 14, 15. See also, A. C. Emery, "An Oath of Freedom," 35th Annual Reynolds Lecture, University of Utah, Feb. 16, 1971.

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of University Professors (AAUP).

An early project undertaken by the AAUP, following its organization in 1915, was the development and articulation of principles and practices relating to intellectual freedoms on campus. It soon found itself deeply involved in the investigation of complaints relating to alleged breaches of both academic freedom and tenure.¹⁰ This investigatory role of AAUP, which ordinarily led to public censure of institutions found to have seriously offended against accepted standards, has continued to the present day, providing a vast body of practical experience relating to academic freedom and tenure questions.

The first formal statement by AAUP attempting to define acceptable standards of academic freedom (the "General Declaration of Principles") was published in 1915. It formed the basis for the 1925 Conference Statement on "Academic Freedom and Tenure" of the American Council on Education and several other national educational organizations. In 1940, the AAUP, in conjunction with the Association of American Colleges, promulgated a re-statement of the same general principles, generally designated as the "1940

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9. A full statement of history of the tenure system and of the AAUP position on academic freedom and tenure, together with a description of related AAUP committee procedures, is found in L. Joughin, ed., Academic Freedom and Tenure (Univ. Wisconsin 1969).
 10. One of the earliest of these cases involved charges relating to the alleged arbitrary dismissal of four faculty members of the University of Utah in 1915, resulting in AAUP censure of the University administration. See R. Chamberlin, The University of Utah: A History of Its First Hundred Years (Univ. of Utah Press, 1960), pp. 328-337.

Statement of Principles on Academic Freedom and Tenure." This statement remains the principal basis of university systems of academic freedom and tenure in the United States, having been officially endorsed by many educational associations and by numerous colleges and universities,¹¹ including the University of Utah. It has been supplemented by other AAUP policy announcements, including most notably the 1958 "Statement on Procedural Standards in Faculty Dismissal Proceedings," the 1966 "Statement on Professional Ethics," and the 1970 "Statement on Freedom¹² and Responsibility."

Although the "1940 Statement" and supplementary guidelines leave the details of a particular tenure system to be worked out in the institution concerned, the relationship between tenure and academic freedom is implicit in the basic features of the kind of tenure system contemplated:

- (1) Faculty members in tenure-producing ranks¹³ are normally expected to serve a probationary period following initial appointment,

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11. The "1940 Statement" was officially endorsed by the University of Utah Board of Regents and included in its Regulations, Chap. IX, § 7. See Exhibit A. These regulations were continued in effect, subject to the power of modification vested in the State Board of Higher Education, by the Higher Education Act of 1969. See Utah Code Anno., § 53-48-25 (Repl. vol. 1970).
 12. The 1958 Statement is reprinted in L. Joughin, ed., *Academic Freedom and Tenure* (Univ. of Wisconsin 1969), p. 40, The 1966 Statement is attached hereto as Exhibit D. The 1970 Statement is attached hereto as Exhibit E.
 13. The tenure system generally does not apply to all academic personnel. For example, at the University of Utah less than half of all academic appointments (i. e., 897 out of a total of 1890 faculty members) are in positions which are tenure-generating. See Table 1, Appendix II. In addition, the 544 teaching assistants currently employed by the university do not hold tenure-producing positions.

during which time their professional competence, academic performance, and general fitness can be evaluated. The assumption is that acquisition of tenure should not be automatic, but should be achieved only after both ability and responsibility have been scrutinized thoroughly by students, faculty colleagues, and university administrators. During the probationary period, the burden of establishing eligibility for retention remains upon the probationary faculty member. Academic freedom is provided during this period by procedures for investigation, hearing, and review of charges of violations of academic freedom in connection with dismissal or other disciplinary action taken against a probationer.

(2) Following completion of satisfactory probation, the faculty member receives "tenure", consisting of assurance of continuous employment. The status of tenure, however, is subject to the condition that employment may be terminated by the institution (a) for "adequate cause", (b) because of bona fide financial exigency or discontinuance of an instructional program, or (c) pursuant to established regulations pertaining to retirement.

(3) When dismissal or other disciplinary proceedings are initiated against a tenured faculty member upon charges deemed to constitute "adequate cause", the charges must be considered by an appropriate committee of the faculty, after due notice and full and fair opportunity for hearing and introduction of relevant evidence. The committee's judgment must be transmitted to and considered by the administration and governing board of the college or university before a final decision is reached.

The faculty committee's role in the dismissal proceedings is regarded as a vital one, because legitimate "cause" for dismissal (e.g., incompetence; failure to observe acceptable standards of professional responsibility; etc.) can too easily be asserted as a subterfuge for unexpressed reasons violative of academic freedom. The risk that improper criteria for dismissal are being employed can best be minimized by reliance upon the responsible judgment of a faculty member's professional peers. In addition, experience demonstrates that the issues in academic freedom controversies are often complicated by the inherent difficulty of applying in specific factual contexts the concept of academic freedom, as well as obscured by ambiguous and conflicting factual data. Since the basic concept itself refers to the full range of responsible intellectual freedom as a standard of judgment, the accumulated experience, professional sensitivity, and mature insight of the academic community in such matters, as represented in the membership of the faculty review committee, provide an important element of expertise in appraising the propriety of the charges. Finally, the designation of tenured faculty members to serve on the faculty review committee provides a measure of protection against "command influence" or other improper pressures.

Further protection of academic freedom is secured in the required hearing procedures by the rule that the burden of persuasion on the question of adequate cause for dismissal or other action taken against a tenured faculty member rests upon the institution. The administration must

discharge the burden of establishing that adequate (academic) cause exists for dismissal or other disciplinary action, and that the charges are not in contravention of standards of academic freedom.

Although the primary focus of academic tenure clearly is the protection of academic freedom, certain collateral advantages of the tenure system should not be overlooked. Stability of employment expectations in academic life, for individuals of demonstrated competence, tends to enhance the attractiveness of the teaching profession and thus may make it possible to induce highly qualified persons to pursue a teaching career in lieu of more lucrative opportunities often available to them in other careers. Indeed, academic freedom itself, with its associated atmosphere of intellectual ferment and unfettered inquiry, can be a powerful incentive for potential faculty members to enter academic life. Moreover, a measure of employment stability and equitable employment practices, including academic freedom, may be a significant determinant of the choice of interested individuals to pursue careers in specialized technical fields which are essential components of contemporary university programs of instruction and research but have no ready counterparts in private or public employment opportunities. Tenure, as a visible manifestation of university commitment to the faculty member, offers an assurance of career continuity which is often essential to a reciprocal faculty commitment to long-term programs of study and research by which the frontiers of knowledge are expanded.

The quest for excellence in education, with its potential enlargement of the intellectual opportunities open to students, thus is significantly assisted by the tenure system. Moreover, that system, when properly functioning, seems well adapted in principle to the task of identification of particularly competent faculty aspirants for whom tenure is warranted, and to the responsible elimination of faculty members who become incompetent or irresponsible after tenure has been achieved. When appropriate standards are fairly and conscientiously applied, the prospect that tenure status may be earned by a probationary faculty member undoubtedly produces substantial educational benefits for students, the institution, and for society as a whole.

III. A CRITIQUE OF TENURE AT THE UNIVERSITY OF UTAH

We have attempted to demonstrate above our conclusion that the system of academic tenure, properly conceived and administered, is carefully designed to protect academic freedom. No evidence has been brought to our attention which intimates that this protective role is not discharged effectively at the University of Utah -- although, we hasten to add, the infrequency with which alleged violations of academic freedom have arisen on this campus suggests that the system has not recently been put to any severe test.

On the other hand, the tenure system here and elsewhere has recently become the object of severe criticism upon the ground that its collateral disadvantages are excessive. Most of the critics concede the importance of academic freedom, but contend that tenure, as a means of securing academic freedom, is inefficient and counter-productive because it operates to protect incompetence, indolence, mediocrity, and irresponsibility on the part of some faculty members.

An adequate and responsible evaluation of this generalized criticism is exceedingly difficult, since its generality conceals both the definition and judgmental criteria of the critics. "Incompetence" in professional matters, for example, is not self-defining; from at least one rational viewpoint, a judgment of incompetence necessarily represents a net negative balance of several independent judgments relating to such matters as technical proficiency, scholarly achievement, and teaching effectiveness. These judgments

of course, invoke a measure of subjectivity, and presuppose a level of expertise in the judge, which make documentation of the criticism a very difficult burden for the critics to sustain. Like a charge of "mediocrity" or "irresponsibility," moreover, "incompetence" may, in some instances, be little more than a veiled attack upon the ideological views or philosophical disposition of the criticized faculty member -- in short, a blatant assault upon his academic freedom.

Despite the ambiguities in the criticism, it poses a challenge to the tenure system which cannot lightly be dismissed. Indeed, as will be pointed out below, the Commission has concluded that, to a limited extent, the charges of the critics appear to be justified in certain respects. But the mere fact that the tenure system may not be fully satisfactory in practice does not necessarily support a conclusion that tenure should be abolished. As we have already suggested, abolition would be an acceptable solution for the inadequacies of tenure only if its primary objective, preserving academic freedom, could clearly be discharged with equal effectiveness through alternative means. With this qualification in mind, we turn to a discussion of the central issue:

Does the existing tenure system at the University of Utah function effectively to prevent academic incompetence or mediocrity and assure adherence by faculty members to acceptable standards of professional responsibility?

A reasoned answer to this question requires a preliminary examination of the specific tenure standards and procedures now in use at the

University. Our review can conveniently be dealt with under the topical headings of Pre-Tenure Review, Standards for Tenure Acquisition, and Post-Tenure Review.

a. Pre-Tenure Review: Persons appointed to tenure-producing faculty ranks (which are limited to the ranks of assistant professor, associate professor, and professor) ordinarily achieve tenure status only upon the completion of a satisfactory probationary period. For faculty members who commence their probation at the rank of assistant professor, this period is normally five years; for others, it is normally three years. In cases of exceptional merit, the probationary period may be shortened by grant of "early tenure."¹⁴ The period of probation also may be extended for an additional two years by the University Tenure Advisory Committee if "unusual circumstances" indicate that the initial period was insufficient¹⁵ for proper evaluation of the candidate. In highly exceptional cases, tenure may be granted at the time of appointment.¹⁶

Acquisition of tenure at the University of Utah is by no means routine or automatic, but results only from an affirmative decision, based on periodic review and evaluation, that the candidate has demonstrated the

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14. "Early tenure" has been achieved, on the average, in about four cases per year during the recent past. See Appendix II, Table 5.
 15. Regents Regulations, Chap. IX, § 5. See Exhibit A.
 16. "Instant tenure" is generally reserved for use in connection with appointments of distinguished senior scholars who have thoroughly demonstrated their professional competence and have achieved tenure at other institutions. An average of about two cases per year of this kind have been noted in recent experience. See Appendix II, Table 5.

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qualifications deemed essential to permanence of appointment. Under
 present University procedures, annual retention evaluations of all non-
 tenured faculty are required to be conducted successively by six different
 reviewing agencies: (1) the student advisory committee organized in each
 department; (2) the departmental faculty advisory committee on tenure
 and retention;¹⁸ (3) the department chairman; (4) the committee on tenure
 and retention matters of the college council in which the department is lo-
 cated;¹⁹ (5) the dean of the college; and (6) the University Tenure Advi-
 sory Committee.²⁰ The record of the recommendations made at each
 stage of the retention evaluation procedures is reported to the President
 of the University for final decision.²¹

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17. The criteria employed in the annual retention and tenure review procedures are described in the University's official "Guide to Retention and Tenure," adopted February 3, 1969. See Exhibit F.
 18. These committees are composed of the tenured faculty in the department plus all nontenured departmental faculty members of higher rank than the candidate. The committees are chaired by the member of the department having the longest period of tenure at the highest rank.
 19. The composition of college council committees on retention and tenure varies from college to college at the present time, since, under applicable regulations each college has a broad range of discretion to establish its own procedures, within the College Council plan for internal University self-government, for dealing with personal matters. In some colleges, the retention committee's determinations are reported to and considered by the College Council as a whole, but this additional step does not appear to be a universal procedure.
 20. The University Tenure Advisory Committee consists of nine faculty members with tenure who hold the rank of full professor, elected by the faculty from representational areas within the University, plus two student members chosen under procedures established by the Associated Students. See Faculty Regulations, Chap. 1, Sec. 20(d), in Exhibit B.
 21. Similar procedures are established to review recommendations for promotion. See Faculty Regulations, Chap. 1, Sec. 19.

The primary bases for a retention recommendation are the academic qualifications and achievements of the candidate, the probability of his continued professional growth, and the extent of his potential contributions to the University.²² Prescribed administrative procedure requires the results of each retention evaluation to be made known to the faculty member in question, usually in a candid private discussion with his department head, so that efforts can be undertaken to correct indicated weaknesses.

The established retention evaluation procedures demonstrate the degree to which the administration and faculty of the University consider the ultimate tenure decision to be vitally important. Since tenure can only be achieved if a candidate survives a series of annual retention evaluations, the crucial judgment is based upon the candidate's performance over the total probationary period. The enormous commitment of student, faculty and administrative effort devoted to these annual review proceedings may strike some observers as excessive. Well-informed individuals, however, regard the undertaking as an indispensable prelude to responsible and thoroughly considered decisions upon tenure itself. Official University policy, as stated in the "Guide to Retention and Tenure" approved by the Faculty Council on February 3, 1969, declares in this connection:²³

22. See Exhibit F.

23. For the complete text of the "Guide to Retention and Tenure", see Exhibit F.

"Since the University assumes what may be a life-long commitment to the professional and economic life of a faculty member when he is given tenure, the decision as to whether tenure should be given is of the utmost importance for the future of the University. In its total impact this decision transcends the significance of annual salary increases and even promotions in rank, for the University's relationships to its students, publics, and funding agencies for years to come are affected by the decisions made at this time."

b. Standards for Tenure Acquisition: During the final year of a professor's probationary period, a decision to grant to deny tenure must be made. The applicable regulations are explicit that for faculty in tenure-producing ranks, "tenure or the right to achieve tenure cannot be waived." ²⁴ Thus, unless the candidate obtains an affirmative recommendation for grant of tenured status at the conclusion of probation, his appointment by the ²⁵ University must be terminated.

The procedures for evaluation of fitness and responsibility for tenure are substantially the same as in the case of annual retention evaluations, described above, and require the exercise of independent judgment at the same six levels of review. The burden of demonstrating that the qualifications demanded for tenure have been met remains upon the faculty member. One minor difference is that the departmental faculty advisory committee which considers the candidate for tenure consists solely of the tenured faculty members in the department. Nontenured faculty of higher rank--

24. Regents Regulations, Chap. IX, § 4, in Exhibit A.

25. Termination of employment, however, is subject to applicable University regulations governing notice of termination. See Regents Regulations, Chap. IX, § 6, in Exhibit A.

who participate in retention evaluations--are excluded from tenure evaluation committees.

The substantive standards which tenure advisory committees are directed to use in reaching a recommendation whether to grant or withhold
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tenure are officially defined in these terms:

"[T]enure is intimately related to academic freedom and should be given only to those the University believes have the qualifications, both professional and personal, to use that freedom responsibly.... It is for this reason that all discussions about tenure should not center on the question used when the man was employed: "Does he have the training and promise to become an outstanding member of the faculty?" Nor should these discussions center on the personal relations which develop as a result of working together: "Is he congenial?" Rather, they should center on the question of demonstrated competence: "Has he shown the skills and interests of a scholar, the abilities and dedication of a teacher, the devotion to the University and all it stands for which would justify the University's lifelong commitment to guarantee his academic freedom and economic security?" Unless this question can be answered, not only affirmatively but enthusiastically, a faculty member should not be recommended for tenure....

"[The tenure advisory] committee should discuss with both candor and justice the faculty member's qualifications and achievements. Such considerations as his interest in teaching and his performance as a teacher, the quality and number of his publications, as well as his reputation of the journal or publishing house which published them, past and current contributions to the department, the University, and the community, and the basis for expecting continued contributions and professional growth should be among the factors which should be discussed. More subjective considerations such as the effect of the individual's personality on his colleagues and students also are relevant, as are questions

26. "Guide to Retention and Tenure" (February 3, 1969), set out in Exhibit F.

concerning the relationships between tenure and promotion. A committee should always recognize that potentially may take longer to develop in some faculty members, that some research or scholarship might be concerned with particularly difficult or unproductive problems, and that progress in some areas may be retarded because of extra service in other areas. But, after full consideration of all the qualifications caused by diverse human beings, the committee must always ask itself whether this faculty member has demonstrated the qualities of mind and temperament which would justify the University's guaranteeing his lifelong freedom and security."

Examination of the combined retention and tenure procedures at the University of Utah demonstrates that achievement of tenure is not an automatic or routine feature of academic life. Table 5 (see attached Appendix II), which reports actual University experience during the past six years, discloses that a significant percentage of faculty candidates failed to achieve tenure status. ²⁷ In summary form, these figures are:

	1965	1966	1967	1968	1969	1970	TOTALS
Faculty granted tenure	40	29	38	43	67	61	278
Faculty denied tenure	5	4	5	4	7	7	32
% denied tenure	11%	12%	12%	9%	9%	10%	10%

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27. Table 5 undoubtedly understates the actual experience, since it includes only the results of the formal retention and tenure review procedures. Evidence received by the Commission, as verified by the individual experience of Commission members, indicates that additional faculty members who perceive the unlikelihood that they will obtain a favorable tenure recommendation, voluntarily withdraw or resign before the formal decision to that effect is made.

c. Post-Tenure Review: Following achievement of tenure, a faculty member may still be dismissed for "adequate cause."²⁸ Several institutional channels provide means for ascertaining the existence of cause for dismissal of particular faculty members: (1) Each college dean and department chairman, through internal channels of communication open to faculty performance. (2) A continuing review of all graduate programs is conducted by the Graduate Council. (3) The Departmental Review Board, elected by the Faculty Senate, investigates and evaluates the performance of each instructional department at least once each five years. (4) Each departmental student and faculty advisory committee, under applicable regulations, has "the responsibility to advise the administration, either on its own initiative or after a request by the administration, when a question arises concerning the competence or conduct of a staff member with or without tenure."²⁹ (5) The Faculty-Student Relations Committee routinely receives and investigates complaints from students relating to faculty conduct. (6) Shortly before graduation, students leaving the University are given the opportunity, through an exit interview and a written evaluation form, to register their views as to faculty performance.

"Adequate cause" for dismissal of a faculty member with tenure is defined in University regulations in these terms:³⁰

"Adequate cause is incompetence in the performance of his duties as a teacher and faculty member, or conduct

28. Regents Regulations, Chap. IX, § 9(1), in Exhibit A.

29. Faculty Regulations, Chap. I, § 20(c). See Exhibit B.

30. Regents Regulations, Chap. IX, Sec. 9(a)(a). See Exhibit A.

which demonstrates that the faculty member lacks the ability or willingness to meet his responsibilities to the university. While the university does not serve as the overseer of the personal morality of the university community, grave personal misconduct may demonstrate inability or unwillingness to meet such responsibilities. Mere expression of opinions, however vehemently expressed and however controversial such opinions may be, shall not constitute adequate cause. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or of their rights as American citizens."

University regulations also provide for dismissal of faculty for "medical reasons which preclude the faculty member from competently performing his duties and responsibilities as teacher and faculty member"³¹ or because of "financial exigency or bona fide discontinuance of a program or department of instruction."³²

Dismissal procedures specifically incorporate two different approaches:

First, informal discussions are initially employed in an effort to bring about a "mutual settlement" of the charges, such as an agreement for voluntary resignation or retirement of the faculty member in question.³³ Such discussions between the faculty member and the administrative officers are particularly productive when the facts underlying the charges are not in substantial dispute. In addition, when information comes to the attention of the University President suggesting the existence of a substantial question relating to the competence or misconduct of a faculty member, and "when,

31. Ibid., Sec. 9(1)(b).

32. Ibid., Sec. 9(1)(c).

33. Regents Regulations, Chap. IX, Sec. 9(2)(a). See Exhibit A.

in the judgment of the president, the interests of the individual or the university can best be safeguarded through a greater degree of privacy or where the matter cannot be resolved otherwise," he may appoint an ad hoc committee of faculty members and others to investigate the matter and give him advice and counsel.³⁴ Testimony received by the Commission indicated that similar informal techniques are often employed by department chairmen and college deans to deal with offending faculty, usually in the form of efforts to induce voluntary withdrawal or resignation. These techniques range from withholding of increases in compensation and imposing of undesirable duty assignments, to an ultimatum offering the choice between resignation or filing of formal charges.

Second, formal dismissal proceedings may be initiated by the service upon the faculty member of a written statement of charges, which must be "framed with reasonable particularity", prepared by the president or his designee.³⁵ The faculty member is entitled to respond to the charges in writing, and may demand a hearing before the University Committee on Academic Freedom and Tenure.³⁶ If a hearing is requested, procedures are established for conducting the hearing in accordance with academic due process standards.³⁷ The procedural regulations, consistent with the

34. Faculty Regulations, Chap. I, Sec. 20(c). See Exhibit B.

35. Regents Regulations, Chap. IX, Sec. 9(2)(a). See Exhibit A.

36. This committee is composed of twelve faculty members elected by secret ballot for overlapping three year terms. Regents Regulations, Chap. IX, Sec. 8, in Exhibit A.

37. Regents Regulations, Chap. IX, Sec. 9(2).

general principles of the tenure system, specifically provide that "the burden of proof that adequate cause exists rests with the institution, and shall be satisfied only by clear and convincing evidence in the record considered as a whole."³⁸ The committee's findings and decision in the matter are given in writing to the president, the faculty member in question,³⁹ and the University Senate. An adverse determination by the president as to the disposition of the matter, whether it be for "dismissal, suspension without pay, or other penalty", may be appealed by the faculty member to the Institutional Council, which has power of final decision.⁴⁰

The informal procedures for disciplinary action which we have described are employed with much greater frequency than the formal committee process. The Commission was unable to discover any formal proceedings leading to dismissal of a tenured faculty member during recent years; on the other hand, testimony of several responsible and informed witnesses indicated that a number of specific cases of "adequate cause" for dismissal had been successfully disposed of by administrative use of the informal procedures. Statistical quantification of such cases appears impossible to develop in reliable form, however, since many of the cases in question were handled on a confidential basis and are reflected in University records only as voluntary resignations without specification of reasons.

38. Ibid., Sec. 9(2)(b), clause [6].

39. Ibid., Sec. 9(2)(b), clause [13].

40. Ibid., Sec. 9(3).

The existence of clearly defined formal dismissal procedures, of course, must be recognized as a contributing factor to the efficacy of the informal techniques since, from the viewpoint of the faculty member in question, "voluntary" withdrawal avoids the notoriety, embarrassment, and possible disgrace, as well as the mental distress, which may attend formal dismissal action. For the same reasons, however, the mere threat of formal charges may exercise an unduly coercive influence upon an innocent faculty member under some circumstances, thereby denying both academic due process and academic freedom. To forestall this result, University regulations specifically provide that any resignations may be appealed by "any faculty member" to the University Committee on Academic Freedom and Tenure, for review and report to the University Senate.⁴¹ The disapproval of any protested resignation by either the Committee or the Senate must be taken into account by the president of the University and by the Institutional Council in arriving at a final decision⁴² whether the resignation should be accepted.

From all of the evidence available to the Commission, we have concluded that the tenure system, in theory and current practice, is well structured to prevent, as far as humanly possible, reception into the tenured faculty of incompetent and irresponsible members.⁴³ The evidence is impressive that the elaborate review and evaluation procedures

41. Faculty Regulations, Chap. I, Sec. 20(e), in Exhibit B.

42. Ibid.

43. The retention and review procedures described above have largely been developed and implemented during the past five years prior to which time acquisition of tenure was apparently somewhat less exacting. During recent years, in addition, the procedures for recruiting new faculty members have been substantially strengthened.

preceding a tenure decision do in fact function with reasonable efficiency to identify and screen out candidates for tenure who are not likely to exhibit the qualities of professional dedication and institutional commitment which warrant a reciprocal commitment by the University to permanent employment. Decisions to grant tenure are reached, under currently prevailing University practices, only after a rigorous and searching investigation into a candidate's qualifications. We have discovered no evidence suggesting that professorial candidates for tenure who are actually unqualified manage to elude the screening process.

The least satisfactory features of the tenure system, we have concluded, arise in the post-tenure period. While the relevant University regulations are calculated to facilitate dismissal of tenured faculty members who fail to measure up to acceptable standards of academic performance and professional responsibility, actual results are not necessarily in full accord with theoretical expectations. Evidence presented to the Commission indicates that instances of tenured incompetence, unacceptable academic performance, or failure to observe professional standards of behavior, do occur within the University from time to time. We are satisfied that such instances are relatively few in number, and probably are not disproportionate to similar situations in other areas of government and private employment; but their infrequency does not provide grounds for complacency. The interests served by the University, and the delicacy of its relationship to its several publics, all demand that

every conceivable step be taken to provide assurance that all abuses of tenured status will be dealt with in a reliable and effective fashion.

Two alternative approaches to a solution seem feasible. One is to abandon tenure and seek other means for coping with academic delinquencies which may be better adapted to eradication of professional inadequacy than is the tenure system, but which, at the same time, promise to provide at least equal protection for academic freedom. A second is to strengthen the tenure system by modifying existing University practices in ways that provide assurance of greater effectiveness in dealing with abuses of tenure but do not weaken the capacity of tenure to safeguard academic freedom.

For reasons explained below, we have concluded that none of the several possible alternatives to the tenure system are clearly preferable, and that it would thus be both prudent and advantageous to pursue the second of these two lines of attack. We have also undertaken to delineate below the specific details of recommended reforms which, in our judgment, are both responsive to the criticisms levelled at the tenure system, and likely to be effective in practice.

IV. POSSIBLE ALTERNATIVES TO THE TENURE SYSTEM

Several alternative systems of personnel administration other than tenure have been proposed for university faculty members. Nearly all of the proposals incorporate, in substance, one or another of these three

approaches: (1) elimination of the tenure system, with faculty employment left to the pleasure of the university administration; (2) adoption of a system of terminal contracts with fixed periods of employment, possibly for periods ranging from 3 to 5 years in length, subject to renewal from period to period; and (3) collective bargaining between university officials and faculty association representatives. Although some merit can be ascribed to each of these alternatives, the Commission found them to be seriously objectionable in certain respects and, in particular, less protective of academic freedom than the tenure system. Each will here be discussed briefly.

(1) Elimination of tenure. It has been suggested that the tenure system may, in earlier times, have been essential to the preservation of academic freedom, but that that function has long since been fully and adequately discharged. Under this view, the principle of academic freedom is said to be so widely and uniformly accepted, institutionally implemented, and judicially protected that tenure is no longer necessary to its preservation. To eliminate tenure, the argument runs, would be simply to deny to incompetent and irresponsible faculty members a form of job security which they do not deserve and which can no longer find justification upon academic freedom or other defensible grounds. It would, furthermore, expand the flexibility with which the university administration could seek to improve the quality of education by upgrading the quality of the faculty.

While the Commission thoroughly concurs in the objectives postulated for this proposal - indeed, no self-respecting faculty member would

oppose the improvement of education - it is regarded as an inherently unsound means for achieving those ends. Its unstated assumption that the tenure system serves primarily as a job security device is an inaccurate and misleading characterization of that system, particularly as it functions at the University of Utah. As we have shown above, the tenure system is designed, both in theory and in procedural arrangements, to prevent incompetent and irresponsible individuals from achieving tenure and to eliminate from tenured ranks those few unqualified professors who elude the screening process or who retrogress after entry. While we concede that the system may not have functioned in practice with complete efficiency, it would in our opinion be irresponsible to abolish it without the strongest possible assurance that the positive values which it serves will not thereby be impaired, and that its deficiencies cannot be remedied by less radical and traumatic methods. Justification of this kind is clearly lacking with respect to the instant proposal.

The academic community shares the concerns of the critics of the tenure system; we have identified no faculty member at the University of Utah who advocates the perpetuation or tolerance of academic incompetence⁴⁴ or irresponsibility. On the other hand, a substantial portion of the academic community finds little basis for the complacent view that academic freedom has matured to the point of axiomatic invulnerability.⁴⁵ Recent

44. See Appendix I, Tables 2 and 7.

45. A substantial percentage of the faculty regards tenure as a protection for academic freedom, and academic freedom as insecure without tenure. See Appendix I, Tables 12, 16 and 17.

court decisions readily document the thesis that the system of freedom of expression, of which academic freedom is a part, although rooted solidly in constitutional provisions and authenticated by more than two centuries of American history, is under continuing attack on many fronts.⁴⁶ Carefully documented reports of investigations at major colleges and universities throughout the United States during recent years provide convincing evidence that the principles of academic freedom are far from universally respected.⁴⁷ Contemporary efforts to curtail the free investigation of ideas on university campuses by excessively restrictive policies limiting the choice of speakers who may be permitted to address campus audiences demonstrate, in modern context, the essential fragility of intellectual liberty.⁴⁸

The vulnerability of traditional academic values was sharply borne home to many university faculty members during the early 1950's, when loyalty investigations, exculpatory oaths, and other devices seriously eroded

46. See W. Van Alstyne, The Constitutional Rights of Teachers and Professors, 1970 Duke Law Journal 841; Developments in the Law - Academic Freedom, 81 Harv. L. Rev. 1045 (1968). A more general analysis of the recent cases on freedom of expression is found in Strong, Fifty Years of Clear and Present Danger: From Schenck to Brandenburg - And Beyond, 1969 Supreme Court Review 41.

47. See, e.g., the recent reports of the AAUP Committee A on Academic Freedom and Tenure, 57 A.A.U.P. Bulletin 35-57 (1971); 56 id. 387-439 (1970). For a fuller bibliography of recent experience, see Appendix G.

48. A. C. Emery, An Oath of Freedom, 35th Annual Reynolds Lecture, University of Utah, Feb. 16, 1971. See also, R. Hofstadter and W. Metzger, The Development of Academic Freedom in the United States (Columbia Univ. Press 1955).

the quality of both faculty and education at some of the most prestigious
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 universities in the nation. In more recent years, assaults upon academic
 freedom have come from a different quarter. Forcible, violent and des-
 tructive tactics have been employed by dissident groups on many college
 campuses, resulting in deaths, injuries, and loss of property, gross dis-
 ruption of educational processes, serious loss of public confidence in the
 higher educational system, and flagrant violations of the academic freedom
 of students and faculty to pursue the orderly and dispassionate investiga-
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 tion of ideas.

Experience suggests that patterns of human behavior contain repe-
 titive strands; the history of past attacks upon academic freedom provides
 no bases for optimism that the future will be any different, or that academic
 freedom will survive unless firmly supported by the general public and the
 academic community operating through generally accepted institutional
 techniques. As the President's Commission on Campus Unrest observed
 in its report of September 1970, we are living in a time of rapid cultural,
 social and technological change in which ever-pressing problems tend to
 generate pressures seeking to polarize and politicize the university com-
 munity. While the expansion of knowledge and human understanding is more

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49. Morris, Academic Freedom and Loyalty Oaths, 28 Law & Contemporary Problems 487 (1963). See, generally, R. S. Brown, Loyalty and Security (Yale Univ. Press 1958); V. Countryman, Un-American Activities in the State of Washington (Cornell Univ. Press 1951); D. Gardner, The California Oath Controversy (Univ. Calif. Press 1967).
50. The most thorough account is in the work of the Scranton Commission, Report of the President's Commission on Campus Unrest (1970). See also, S. Hook, Academic Freedom and Academic Anarchy (N. Y. 1970).

important today than ever before, "both external and internal threats to academic freedom have increased as the nation has become more sharply divided." To protect the components of academic freedom -- including an atmosphere conducive to open and lively debate, absence of intimidation, mutual respect and tolerance, and generosity of viewpoint -- the Commission urged the academic community to devote increased "resistance to pressures toward conformity" and to demonstrate a "steadfast . . . commitment to combat dogmatism, intolerance, and condescension, as well as attempts to suppress divergent opinions among its members."⁵¹ The tenure system, as we have pointed out above, provides a well-established framework, of proven effectiveness, for implementing these objectives.

The suggestion that the judicial system can effectively provide protection for academic freedom seems very dubious. While in recent years, the United States Supreme Court has begun to examine the constitutional implications of academic freedom, the law in this regard is still in its formative stages.⁵² It is now reasonably clear that both faculty members and students are entitled at least to a minimal degree of constitutional protection against interferences by public officials with their freedom of expression, but it will probably require many years for the courts to develop a reasonably comprehensive jurisprudence of academic freedom.⁵³

51. Report of the President's Commission on Campus Unrest, pp. 188-189 (1970).

52. See, e.g., Pickering v. Board of Education, 391 U.S. 563 (1968); Keyishian v. Board of Regents, 385 U.S. 589 (1967). See also the legal analysis in Appendix III.

53. See W. Van Alstyne, The Constitutional Rights of Teachers and Professors, 1970 Duke Law Journal 841, 847-858.

In any event, the judicial system can only be expected to provide peripheral support for a system of academic freedom on campus which is adequate to educational needs. Litigation can be costly and time-consuming and thus an inherently inefficient process for resolving the kinds of disputes likely to arise within educational institutions committed to academic freedom. Abolition of tenure would undoubtedly result in transferring many claims of violations of academic freedom, arising in dismissal and non-retention cases, from the less cumbersome administrative processes of the University to the courthouse. The resulting detriment to the educational process, as faculty members and administrators are compelled to divert their energies from educational concerns to pretrial discovery proceedings, conferences with counsel, and attendance at trials, could be significant.⁵⁴ More fundamentally, reliance on court procedures would vest the power of judgment over essentially professional educational issues in the hands of persons (e.g., judges and jurors) lacking in the specialized experience and insight necessary to informed decision-making.⁵⁵ Finally, from a broad viewpoint, it seems clear that constitutional law has inherent limitations that necessarily impair the capability of the judicial system to provide an

 54. The potential volume of court actions should not be underestimated. The Chairman of AAUP Committee A on Academic Freedom and Tenure, for example, recently reported that nearly 750 complaints were received by AAUP during the 1969-70 academic year. W. Van Alstyne, *supra* note 53, at 841.

55. See C. Byse and L. Joughin, *Tenure in American Higher Education* 142-47 (Cornell Univ. Press 1959).

acceptable general alternative to tenure as a means of protecting academic
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 freedom.

It is questionable whether any other institutional arrangements of a quasi-legal nature can match the capacity of the tenure system for providing substantial protection to academic freedom. To state this conclusion is in no way to disparage the valued role of the American Association of University Professors (AAUP). As the principal nationally organized agency actively working for the protection of academic freedom, AAUP enjoys both the numerical membership strength and broad national visibility commensurate to its chosen task. AAUP, however, regards the tenure system as essential to the preservation of academic freedom, and exerts its primary influence by insisting upon scrupulous adherence to academic due process as institutionalized in prevailing tenure systems. Indeed, it is a practical certainty that abolition of tenure at the University of Utah would be regarded by the AAUP as necessarily entailing a significant impairment of academic freedom.

An AAUP determination to this effect could seriously cloud the academic status of the University, potentially impairing the ability of the Uni-
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 versity to recruit and retain faculty members of superior ability, as well

56. To the extent that judicial protection for academic freedom emanates from the 1st and 14th Amendments to the United States Constitution, such protection will be principally available only at public colleges and universities, since neither of these constitutional limitations is applicable to purely private institutions. The concept of academic freedom, however, is one which permeates the entire system of higher education and is not limited to state colleges and universities.

57. See Appendix I, Tables 11, 12, and 13.

as its capacity to attract federal and foundation grant support.⁵⁸ While certain private educational institutions, such as church affiliated universities, may not find formal tenure essential for faculty members recruited primarily from denominational ranks, the reputation for academic freedom held by a public university is widely regarded as indispensable to maintenance of a distinguished faculty.

It is also clear that the abolition of tenure would be regarded by many members of the University faculty as a deliberate refutation of any reciprocal commitment between the University and its faculty.⁵⁹ This, in turn, could well motivate faculty members to devote increasing attention to the development of their status and reputation in professional circles outside of the university as a means of assuring personal employment mobility. Moreover, it seems highly likely that abolition of tenure would generate strong pressure for faculty members to organize into professional associations (i. e., unions) for the purpose of taking concerted action to achieve the same kinds of protections which formerly had been available through the tenure system.⁶⁰ As we point out below, unionization and collective bargaining could well be detrimental to academic freedom by

58. See Appendix I, Tables 14 and 15.

59. See Appendix I. Tables 11, 12, and 15.

60. See Kadish, The Strike and the Professoriat, in Dimensions of Academic Freedom, p. 34 (Univ. of Illinois Press, 1969).

reducing it to the status of a bargaining objective of variable content, dependent upon the relative strength of the negotiating parties. In the commission's view, academic freedom embodies fundamental values which should remain non-negotiable since they directly and immediately affect the quality of education provided by the University.

In the preceding discussion, we have assumed that a proposal to abolish the tenure system would necessarily also eliminate or modify the institutional dismissal procedures embodied in the tenure system to provide assurance that the power of dismissal is not used to infringe upon academic freedom. As already pointed out, the essential core of these procedures consists of the imposition upon the University of the burden of establishing to the satisfaction of a faculty committee the existence of adequate academic grounds for dismissal of tenured faculty members. That is, the University must demonstrate that the proposed dismissal is based upon the individual professor's failure to meet acceptable standards of professional performance and responsibility, and that it is not predicated upon grounds which violate his academic freedom.

Allocation of the burden of proof in this manner is a logical consequence of the fact that the tenured faculty member in question has, by definition, previously been adjudged professionally competent after a thorough and multi-level screening process during a prolonged period of probationary service. He thus is entitled to a presumption of continued competence thereafter until the contrary is established. But, more importantly, it also reflects concern, born of experience, that a dismissal may actually be motivated

by unexpressed reasons that violate the principles of academic freedom, although formally based upon grounds that do not do so. It is thought that placing upon the faculty member the burden of proving that the proposed dismissal is not supportable on the grounds formally advanced by the administration would require him to discharge the difficult task of proving a negative in a factual situation likely to be clouded by ambiguity. The tenure system thus reflects the dual conviction that (a) an inevitable erosion of academic freedom would result from allocating the burden of proof to the faculty member, and (b) if adequate academic cause for dismissal does in fact exist, it should not be an inordinately difficult task for the administration, with its superior resources, to adduce supporting evidence thereof.

If a proposal to abolish tenure contemplates the vesting of power in the university administration to dismiss a faculty member without assigning cause, and without the obligation to establish rational academic grounds for its action, it seems to be little more than a frontal assault upon academic freedom. There is no doubt that to vest the power of arbitrary dismissal of faculty members in any university official or governing board would seriously debase higher education, to the tragic detriment of students and citizenry alike.

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61. We recognize that since the burden of demonstrating eligibility for retention and tenure remains upon the faculty member during the pretenure probationary period, a very real risk to his academic freedom may exist during this time. That risk is deemed bearable only because it is of explicitly limited duration, and is indispensable to the careful and conscientious selection of faculty members who deserve to be awarded tenure. The risk is partially minimized, although not fully dissipated, by procedures which have been devised to review termination recommendations relating to nontenured faculty members. See Exhibit H.

On the other hand, if the abolition proposal asserts an intention to protect academic freedom through review proceedings before faculty committees, where dismissals are contested, it necessarily implies⁶² that the burden of proof (i. e., the risk of nonpersuasion) will be shifted to the faculty member to establish that his proposed dismissal is predicated upon grounds which are academically untenable, or upon grounds that impair his academic freedom. The burden would, as a practical matter, be insurmountable in many cases. As already noted, academic incompetence and irresponsibility are generic descriptions of widely varying forms of professional behavior; a resourceful administrator would ordinarily have little difficulty in showing some support, however tenuous, for a decision to dismiss, where the burden of demonstrating a preponderance of supporting evidence for that decision did not rest upon him. Similarly, the ease with which political or ideological antipathies contravening academic freedom can be hidden or masked beneath ostensibly objective charges against faculty members would make it exceedingly difficult, in many cases, for the faculty member to establish the existence of such improper motivations for his dismissal. Under the tenure system, where the burden of proof is squarely upon the administration, weak evidentiary support for charges of academic incompetence inferentially suggest the existence of unstated, and impermissible, grounds for the proposed dismissal.

The way in which the burden of proof in dismissal proceedings is

62. This implication is a "necessary" one, because the critical significance of tenure revolves about the allocation of the burden of proof in dismissal proceedings to the administration.

allocated is thus an absolutely vital feature of the procedures (known as the tenure system) which protect academic freedom. The proposed abolition of tenure, here under discussion, would mean that faculty dismissals could in fact be predicated upon grounds not related to appropriate academic concerns, and yet be insulated from effective challenge by an insurmountable burden of proof. The resulting erosion of academic freedom would, in our judgment, be seriously detrimental to the quality of education.

(2) Fixed Term Renewable Contracts. As another possible alternative to the present tenure system, the University might issue fixed term contracts (e. g., perhaps for five year terms) to its faculty members which provide that employment would automatically terminate at the end of the contract period unless a new contract were offered by the administration following an appropriate review as to competence and responsibility.⁶³

If a fixed term contract system of this sort allocated to the faculty member the burden of establishing the existence of adequate grounds for continuation of his employment as a faculty member, the differences between this proposal (in which employment would be assured only for short periods) and outright abolition of tenure (in which employment would be at the pleasure of the administration) would be negligible.

On the other hand, if a fixed term contract system implied that employment would ordinarily be continued unless the administration established

63. Term contract systems of this sort are apparently being tried experimentally at a few institutions, including Hampshire College (Amherst, Mass.), Franklin Pierce College (Rindge, N. Y.), and Johnston College of Redlands University (Redlands, Calif.). See Wall Street Journal, April 16, 1971, p. 1, col. 1.

adequate cause for nonrenewal, the system would be practically indistinguishable from the existing tenure system, except that the burden of demonstrating competence would never rest upon the faculty member (as it now does during the initial probationary evaluation period) and that periodic competency reviews would be required of all faculty.

Assuming, for the moment, that a fixed term contract would be deemed non-renewable unless the faculty member establishes grounds for continuation of his employment at the end of each contract term, it seems clear that additional practical problems of a significant nature would also arise. It is doubtful that the busy administrative officers in a large institution, such as the University of Utah, could themselves effectively perform the task of reviewing all faculty members for retention at the end of their contract terms; yet it is equally doubtful that the proponents of the fixed term contract system would agree to a large and costly expansion in administrative personnel deemed qualified to make such judgments. The task of performing the necessary periodic contract reviews would inevitably, it seems, fall upon the faculty as it now does under the tenure system. However, if all of the faculty were equally nontenured, as the proposal contemplates, those engaged in making retention (i. e. contract renewal) judgments would have a substantial conflict of interest, since they would be exposed to like review within a short period of time, possibly by the very persons whom they are currently reviewing. The inherent propensity of such a system to be tolerant of incompetence seems far greater

than that of the present tenure system, under which faculty members who have achieved tenure and whose own economic security is thus not in jeopardy, are in a position to evaluate their colleagues according to objective professional standards.

The periodic contract system thus appears to include most of the deficiencies of outright abolition of the tenure system, and also would seem to be enormously difficult to administer in an even handed and equitable fashion. This proposal, however, has merit in one respect. It offers a constructive approach to the problem of dealing with incompetence or irresponsibility that develops after acquisition of tenure. It postulates the need for a continuing review of faculty performance with an eye to eliminating from faculty ranks those professors who fail to maintain satisfactory levels of professional adequacy. As we shall point out below, this constructive feature of the proposal can undoubtedly be employed effectively within the framework of the existing tenure system.

(3) Unions and Collective Bargaining. Efforts at unionization of faculty to facilitate collective bargaining on matters of job security, as well as questions of academic freedom, would in the judgment of the commission inevitably follow from an abolition of the tenure system. Indeed, in certain parts of the country, a movement toward unionization of faculties of institutions of higher education is rapidly moving ahead, and facilitating legislation has been enacted in several states. ⁶⁴ Collective bargaining

64. See Kadish, The Strike and the Professoriat, in Dimensions of Academic Freedom, p. 34 (Univ. of Illinois Press, 1969). The full dimensions of the legal problems involved in collective bargaining on behalf of university faculties are explored in an extended symposium, Collective Negotiation in Higher Education, 1971 Wis. L. Rev. 1-274.

systems are already in effect in some of the major universities along the east coast (including Rutgers University, St. John's University, and the State University of New York).⁶⁵ On-going efforts to organize college faculties have been undertaken by both the United Federation of College Teachers (an affiliate of the American Federation of Teachers) and the National Education Association.⁶⁶ Recently, the National Council of the AAUP adopted a revised policy statement urging college faculties to select local AAUP chapters as bargaining representatives where a movement toward collective bargaining has reached that point.⁶⁷

The mixed record in Utah of unionization and collective bargaining efforts by public school teachers and other public employees, the absence of implementing legislation, the traditionally individualistic bias of the learned professions, and the traditional sharing of decision-making powers between University administrators and faculty members, all suggest that unionization among college faculties in Utah is likely to encounter resistance as long as tenure exists. Undoubtedly, however, abolition of tenure would greatly accelerate the process of unionization.

65. Academe, Vol. 5, No. 1 (Feb. 1971), p. 1, col. 3; Academe, Vol. 4, No. 4 (Oct. 1970), p. 1 col. 1; S. Jacobson, Faculty Collective Bargaining at the City University of New York (Undated manuscript in commission files.)

66. Ibid. Collective bargaining programs have attracted significant interest at institutions in California, Michigan, New York and Pennsylvania.

67. "Policy on Representation of Economic and Professional Interests," AAUP Bulletin, vol. 55, No. 4 (December 1969), p. 489.

In the judgment of the commission, unionization and collective bargaining would not be desirable alternatives to the tenure system at the University of Utah. The bargaining process is not always well adapted to protect the community's interest in higher education, and in times of emotional stress or crisis, may be particularly susceptible to pressures that might be injurious to educational objectives. Although collective negotiations in the industrial sector have traditionally focused upon the economic incidents of employment (salaries, fringe benefits, etc.), it seems inevitable that an abolition of tenure would tend to introduce into the academic bargaining process issues relating to both job security and academic freedom.⁶⁸ The principles of academic freedom, which tenure is primarily designed to protect, are deemed far too important to be the subject of bargaining negotiations. Responsible judgments with respect to matters of professional competence should be made in a quasi-adjudicative rather than a bargaining process. Such judgments, moreover, can be made most competently and reliably, as in the present tenure system, by professional peers of the individual whose performance is being evaluated.

It seems probable that a collective bargaining process would also tend to result in relatively fixed salary scales, with periodic increments based upon length of service or other set criteria, thereby reducing the flexibility with which the university administration can reward excellence and provide incentives to more effective academic performance by faculty members.

68. The AAUP statement, note 67 *supra*, expressly contemplates that collective bargaining contracts would seek to include "explicit guarantees of academic freedom and tenure."

Finally, experience in negotiating teacher contracts both in Utah and elsewhere suggests that collective bargaining procedures tend to polarize viewpoints, rigidify bargaining positions, delay resolution of disputes, and induce resort to "pressure" tactics, such as strikes, picketing, slowdowns, and boycotts, in an effort to influence negotiations. Although such tactics are inimical to traditional academic ideals, professional attitudes may yield to the requirements of tactical expediency if the incentives become great enough. In confrontations of this sort, the interests of students, taxpayers, faculty, and university alike may suffer. By way of contrast, the existing tenure system provides a time-honored institutional mechanism for dealing with problems of faculty incompetence or irresponsibility, as well as questions of employment security, in a professional and individualized manner conducive to avoidance of the politics of direct confrontation.

V. CONCLUSIONS AND RECOMMENDATIONS

For the reasons stated above, the Commission has concluded that the affirmative educational values associated with and protected by the tenure system -- especially the indispensable freedoms to teach, learn, investigate, evaluate, criticize, and communicate -- would be gravely threatened by its abolition, and that the alternatives to tenure are not likely to provide effective protection of these values. At the same time, it is recognized that the tenure system is popularly associated with, and

may to some extent be responsible for, some inadequacies of performance
 69
 by tenured faculty members. The perceived deficiencies in faculty conduct
 appear to relate primarily to three matters: (1) Improper conduct or
 failure to meet professional commitments; (2) inadequate teaching or scholarship, or other deficiencies described as professional "incompetency";
 and (3) lack of visible and appropriately structured procedures for initiating
 and processing complaints against tenured, as well as nontenured, faculty
 70
 members.

 69. Approximately 30% of the faculty members responding to the Commission's questionnaire indicated a personal belief that one or more members of their departmental staffs should be dismissed. See Appendix I, Tables 1 and 1A. This figure, however, must be viewed with caution, since no departmental identification is possible (due to the confidential manner in which the questionnaire was structured and administered). It seems likely, for example, that many of the affirmative responses may have come from different members of a few departments, representing a consensus of departmental faculty opinion about the same individual or individuals. Although 30% of the responding hold the view that some faculty members in their departments should be dismissed, the number of faculty members deemed deserving of dismissal may, in fact, be relatively small.

The fact that 70% of the responding faculty identified nobody in their departments as deserving dismissal may thus be a more significant measure of faculty perceptions as to the quality of the faculty, since incompetence, poor teaching, inadequate scholarship and other derelictions are widely understood to be grounds warranting dismissal. Appendix I. Table 7.

It should also be noted that the responding faculty members also expected that some of those deserving dismissal would, in fact, leave the University (id., Tables 3 and 3A), and that the continued employment of about half of those not dismissed would be due to factors other than tenure. Id., Tables 4, 5, 5A.

70. These sources of discontent were repeatedly alluded to in testimony of witnesses appearing before the Commission. In varying forms they appear to be reflected also in the results of the Commission's faculty questionnaire (see Appendix I, Tables 2, 17, 26) and in written suggestions and comments received from members of the faculty and from student advisory committees.

As to faculty perceptions as to the extent and sources of discontent with the tenure system, see Appendix I, Tables 24, 25.

The Commission believes that strong, explicit and affirmative action should be undertaken to deal appropriately with these sources of dissatisfaction. It should be noted, however, that the perceived deficiencies are not a necessary result of the tenure system. These problems would exist in the absence of tenure. To abolish tenure would be an unwarranted and misdirected action that fails to deal with the real sources of difficulty. It thus seems clearly preferable to devise remedies within the existing tenure system that can be structured to deal with them in a direct fashion. Accordingly, the Commission proposes:

RECOMMENDATION NO. 1: The tenure system at the University of Utah should be maintained.

RECOMMENDATION NO. 2: Affirmative measures should be undertaken by the University community to assure full compliance by all faculty members with professional standards of performance and responsibility.

The Commission has given prolonged consideration to the nature of the steps which could be taken to cope with the inadequacies of present faculty accountability arrangements. While we regard it as beyond the purview of our assignment to formulate detailed programmatic recommendations with reference to these matters, a responsible discharge of the Commission's duties requires at least a preliminary assessment of the appropriate directions in which university policies should move. The recommendations that

follow are offered solely as preliminary and tentative proposals designed to elicit thorough discussion and evaluation by all segments of the University and general community. We have not submitted them as definitive measures for immediate adoption. This should not obscure the Commission's conviction that administrative steps leading to early implementation of appropriate substantive improvements in these areas of concern should be pursued as a matter of high priority and urgency.

(1) Proposed code of faculty responsibilities. During the years which have passed since the promulgation of the 1940 Statement of Principles on Academic Freedom and Tenure, the attention of the academic community has been focused largely upon the need to define and protect the values inherent in academic freedom. On the whole, the tenure system has discharged its protective role with a fair degree of visibility, if not with unmitigated success.⁷¹ Until recently, relatively little energy has been devoted to examination and exposition of the corollary principles of academic responsibility. However, the AAUP has recognized from its very inception that membership⁷² in the academic profession carried with it certain special obligations. In

71. As of March 1971, the administrations of 25 colleges and universities in the United States were listed by the AAUP as "censured" because "unsatisfactory conditions of academic freedom and tenure [had] been found to prevail" at such institutions. AAUP Bulletin, vol. 57, No. 1, p. 3 (Spring 1971).

72. The 1940 Statement declared that "Academic freedom... carries with it duties correlative with rights." More specifically, the Statement noted that in public utterances, a faculty member "should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman." See Exhibit C. Other official statements emanating from AAUP relating to academic responsibilities include the "1940 Committee A Statement on Extramural Utterances" (L. Joughin, ed., Academic Freedom and Tenure, Univ. Wisconsin 1969, p. 64); the "1964 Statement on Preventing Conflicts of Interest in Government-Sponsored Research at Universities" (id. at 82); the 1966 Statement on Professional Ethics (attached hereto as Exhibit D); and the 1970 Statement on Freedom and Responsibility (attached hereto as Exhibit E).

1966, the annual meeting of AAUP adopted as official association policy an approved Statement on Professional Ethics which sets forth, in broad and comprehensive terms, the substance of faculty obligations in this regard: 73

I. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning on his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of students reflects their true merit. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

73. L. Joughin, ed., *Academic Freedom and Tenure*, Univ. Wisconsin 1969, p. 88. The complete statement is attached hereto as Exhibit E.

IV. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution, provided they do not contravene academic freedom, he maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions.

V. As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

In elaboration of this statement of professional ethics, the National Council of AAUP, in October 1970 adopted an additional position paper, entitled "A Statement of the Association's Council: Freedom and Responsibility." After noting the "continuing attacks on the integrity of our universities and on the concept of academic freedom itself. . . marked by tactics of intimidation and harassment and by political interference with the autonomy of colleges and universities," this statement declared:

74. AAUP Bulletin, vol. 56, No. 4, p. 375 (Winter 1970). The complete Statement is attached hereto as Exhibit E.

Membership in the academic community imposes on students, faculty members, administrators, and trustees an obligation to respect the dignity of others, to acknowledge their right to express differing opinions, and to foster and defend intellectual honesty, freedom of inquiry and instruction, and free expression on and off the campus. The expression of dissent and the attempt to produce change, therefore, may not be carried out in ways which injure individuals or damage institutional facilities or disrupt the classes of one's teachers or colleagues. Speakers on campus must not only be protected from violence, but given an opportunity to be heard. Those who seek to call attention to grievances must not do so in ways that significantly impede the functions of the institution.

Students are entitled to an atmosphere conducive to learning and to even-handed treatment in all aspects of the teacher-student relationship. Faculty members may not refuse to enroll or teach students on the grounds of their beliefs or the possible uses to which they may put the knowledge to be gained in a course. The student should not be forced by the authority inherent in the instructional role to make particular personal choices as to political action or his own part in society. Evaluation of students and the award of credit must be based on academic performance professionally judged and not on matters irrelevant to that performance, whether personality, race, religion, degree of political activism, or personal beliefs.

It is a teacher's mastery of his subject and his own scholarship which entitle him to his classroom and to freedom in the presentation of his subject. Thus, it is improper for an instructor persistently to intrude material which has no relation to his subject, or to fail to present the subject matter of his course as announced to his students and as approved by the faculty in their collective responsibility for the curriculum.

Because academic freedom has traditionally included the instructor's full freedom as a citizen, most faculty members face no insoluble conflicts between the claims of politics, social action, and conscience, on the one hand, and the claims and expectations of their students, colleagues, and institutions, on the other. If such conflicts become acute, and the instructor's attention to his obligations as a citizen and moral agent precludes the fulfillment of substantial academic obligations, he cannot escape the responsibility of that choice, but should either request a leave of absence or resign his academic position.

At the conclusion of the 1970 statement, the Council urged college and university faculties to "recognize their stake in promoting adherence to norms essential to the academic enterprise" and to "assume a more positive role" as guardians of academic values. It was specifically recommended that rules for "faculty self-regulation", embodying a system of flexible sanctions for use in faculty disciplinary proceedings, should be adopted on each campus consistent with "local circumstances." In keeping with this recommendation, statements of faculty responsibilities have recently been promulgated at several major universities, including the University of California (Berkeley), Stanford University, and the City University of New York.

The Commission believes that the adoption of a Code of Faculty Responsibilities at the University of Utah would be a salutary foundation for more effective utilization of the principles of the tenure system in the interest of quality education. Such a code, consistently with academic freedom, could assist materially in defining the legitimate expectations of the University as to acceptable standards of faculty performance. Although the code should avoid undue rigidity, and should be adaptable to a broad range of contingencies, it should incorporate a reasonably specific basis for identifying acts and omissions deemed to be grounds for dismissal or other disciplinary sanctions. It should also provide sufficient clarification of faculty obligations to dispel the kind of administrative inertia, rooted in claims of ambiguity and uncertainty as to applicable standards, that might tend to

resist initiation of disciplinary proceedings against errant faculty members. Accordingly, the Commission proposes its

RECOMMENDATION NO. 3: The University community should initiate appropriate proceedings leading to the adoption of a Code of Faculty Responsibilities, consistent with traditionally accepted principles of academic freedom.

In order to illustrate the kind of code which the Commission contemplates, in the event that Recommendation No. 3 is approved, the following discussion draft is offered:

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75. The Commission emphasizes that the draft code here submitted, which is based primarily upon the code of professional conduct, adopted February 11, 1971, by the Berkeley Division of the Academic Senate of the University of California, is not here recommended for adoption at the University of Utah. It is submitted solely as a discussion document designed to promote further discussion and ultimate implementation of Recommendation No. 3.

UNIVERSITY OF UTAH
CODE OF FACULTY RESPONSIBILITIES
(DISCUSSION DRAFT)

I. General Policies

The 1966 Statement of Professional Ethics, and the 1970 Statement on Freedom and Responsibility, approved by the American Association of University Professors, are confirmed and declared applicable to the faculty of the University of Utah.

While all members of the faculty are expected to adhere to acceptable standards of professional ethics and responsibility, not every departure from the ideal specifications set forth in the 1966 Statement exposes a faculty member to formal disciplinary sanctions. On the other hand, disciplinary sanctions, as authorized in this Code, should ordinarily be imposed on a faculty member for acts or omissions incompatible with the 1966 and 1970 Statements and which significantly impair the University's central function as an institution of higher education.

The acts and omissions designated in part II of this Code as bases for university discipline are not intended to comprise an inclusive description of the kinds of faculty behavior which may warrant imposition of sanctions. Other acts or omissions may also justify disciplinary action if, consistent with the general policies here expressed, they are determined to be irresponsible, incompetent, or unethical, or they are found to significantly impair the fitness or ability of the faculty member to discharge his obligations to the University.

II. Acts and Omissions Warranting University Discipline

Acts and omissions of faculty members which may warrant imposition of university disciplinary sanctions include:

1. Unjustified failure to meet scholarly responsibilities, as evidenced by -

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Discussion
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- (a) Intentional violation of canons of intellectual honesty, such as plagiarism or other intentional misappropriation of the work of others.
 - (b) Discrimination, in the exercise of the responsibilities of a faculty member, upon grounds irrelevant to academic eligibility, qualifications, or performance, such as political beliefs, race, religion, sex, or ethnic origin.
 - (c) Failure to meet the responsibilities of instruction, including persistent intrusion of material which has no relation to the subject matter of the course; arbitrary refusal to meet with and counsel students in academic matters; use of nonacademic criteria in evaluation of student work; or unjustified failure to meet scheduled classes.
 - (d) Use of the position or powers of a faculty member to impair a student's academic freedom.
2. Breaches of responsibility within the University community, as evidenced by -

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- (a) Willful interference with or denial of lawful freedom of movement or use of University physical facilities to any person entitled thereto; willful interference with the lawful performance of the duties of the faculty or staff of the University; or willful interference with the lawful pursuit of educational activities on campus.
- (b) Intentional violation of applicable laws or of university rules and regulations relating to the maintenance of public order, safety, welfare, and security of persons and property upon the University campus, where such violation significantly impairs the central function of the University as an institution of higher education; or incitement of others to violate such laws or university rules and regulations, ~~where~~ the incitement creates a clear and probable danger that violation will occur.

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- (c) Unauthorized utilization of university resources or facilities on a significant scale for personal pecuniary gain or for political or sectarian activity.
- (d) Deliberate misrepresentation of personal views as a statement of position of the University or an agency of the University.
- (e) Commission of a crime the circumstances of which demonstrate unfitness to be a member of the faculty of the University.

III. Sanctions.

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1. Upon a determination pursuant to established academic procedures that a faculty member is guilty of a violation of this Code, the selection of an appropriate sanction shall be based upon all of the circumstances of the case, including:
 - (a) The seriousness of the infraction.
 - (b) Its impact upon the effectiveness of the university in discharging its functions.
 - (c) The relative probability of repetition of the infraction by the faculty member, and of the commission of like infractions by others.
 - (d) The attitude of the faculty member with respect to the future discharge of his professional obligations.
2. Disciplinary measures taken pursuant to this Code shall be governed by the general principle that the severity of sanction imposed shall be proportional to the gravity of the offense.
3. Sanctions which may be imposed for violations of academic responsibilities may include, in ascending order of severity -
 - (a) Private reproof.

Discussion
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- (b) Letter of reprimand.
 - (c) Official censure by the president of the university.
 - (d) Imposition of explicit probationary terms and conditions, violation of which may result in dismissal from the University.
 - (e) Suspension from duty without pay for a specified period.
 - (f) Reduction in pay.
 - (g) Dismissal from the university.
4. At any stage of proceedings against a faculty member based upon formal charges of violations of this Code, the faculty member, with the approval of the president of the university may be permitted to tender his resignation, to accept a reduction in pay, or to take a leave of absence without pay for a specified period of time, in lieu of formal prosecution of the charges and imposition of a formal sanction.

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The Commission thus proposes its

RECOMMENDATION NO. 4: The University community should develop a permanent career development program for all faculty members.

While the details of such a career development program will necessarily require thorough study and possibly a measure of experimentation, we suggest that in its implementation consideration be given to a variety of approaches:

(a) Systematic periodic review of the adequacy of academic performance of all members of the faculty should be undertaken, including the possibility of classroom visitations to observe teaching effectiveness. In connection therewith, administrative procedures should be established for improving the understanding of faculty members, in both tenured and non-tenured positions, as to individual and departmental expectations, and as to the results of the periodic evaluation of each faculty member's performance and standing relative to such expectations.

(b) Continued emphasis should be placed upon evaluation of departmental effectiveness through the auspices of the University Departmental Review Board and Graduate Council review committees.

(c) Studies leading to the development and refinement of criteria for measuring and evaluating faculty effectiveness and competence should be supported and expedited.

(2) Program of career development. The University of Utah system of tenure, as described above, provides elaborate and painstaking procedures, normally extending over a period years, for reaching the ultimate determination whether a non-tenured professor has demonstrated the professional ability, teaching effectiveness, and qualities of mind and character that justify the grant of tenure.

The Commission has concluded that this pre-tenure review system is functioning with a reasonable degree of thoroughness, and that few, if any, incompetent faculty members elude the screening process and enter tenured status. The existence of "incompetence" among some tenured members of the faculty -- although partially the product of less effective probationary review procedures employed in the past -- is, and for the future is likely to continue to be, largely a manifestation of arrested career development rather than of inherent lack of intellectual capability. Rational explanation for individual cases of declining professional adequacy may be found in a variety of complex and interacting factors, seldom fully perceived and often misunderstood, that relate to the psychology of teaching, nature of academic commitments, level of professional aspirations, quantum of physical and intellectual vigor, and other personal factors unique to the individual. In many, if not most, such instances, it seems probable that reanimation and self-renewal are feasible, if appropriate institutional assistance is provided. Even more importantly, early identification of factors likely to lead to diminution of teaching effectiveness and intellectual progress by a faculty member

whether tenured or non-tenured, could provide the basis for preventive measures designed to arrest the process and, hopefully, reinvigorate the academic potential of the individual.

The Commission is convinced that the public interest would be substantially advanced by a program of academic career development for all University faculty members, structured to promote the goals of life-long improvement in professional competence, familiarization with and employment of more effective teaching methods, stimulation of professional aspirations, enrichment of the opportunities of academic life, and renewal of creative commitments to the purposes of the University.

The University's decision to employ a professor on a probationary basis, and its subsequent decision that he should receive tenured status, involve mutual commitments between the professor and the institution. In the great majority of cases, these commitments are fully honored by both parties. When one (i.e., the professor) begins to fail in his obligations, often through no intentional default on his part, the University should undertake to provide rehabilitative and correctional aids in the mutual interest of both parties. Longevity of service is clearly not irrelevant in this connection; the revitalization of a declining, though experienced and intellectually capable, faculty member who has devoted an extended part of his life to the University represents a far more humane approach than dismissal. In addition, the effort, if successful, may well prove to be both educationally and economically sounder than to replace a mature faculty member with an inexperienced teacher of unknown potential.

(d) Counseling services and other forms of professional assistance should be made fully available to faculty members seeking to improve their teaching techniques.

(e) Information relating to the results of investigations into teaching effectiveness, experiments in teaching innovations and use of technological aids, should be disseminated to all faculty on a regular basis.

(f) Modifications should be considered in the University's institutional systems of incentives and rewards for excellence of faculty performance.

(3) Improved complaint procedures. Evidence brought to the Commission's attention indicated that many members of the University community, as well as citizens at large, are inadequately informed as to the availability of disciplinary procedures which may be brought to bear against faculty members who fail to meet their professional commitments. Indeed, much of the criticism of the tenure system appears to reflect a sense of frustration on the part of individuals who perceive the existence of grounds for complaint against particular faculty members (both tenured and non-tenured), but who believe (often quite erroneously) that "nothing can be done about it." Even those who concede the critical importance of faculty responsibility as an indispensable corollary of academic freedom sometimes regard the tenure system as lacking in effective methods for assuring accountability.

As we have already pointed out above, these criticisms appear to represent, at least in part, a misunderstanding of the tenure system as a protection for incompetence and irresponsibility. They seem also to reflect

prevailing uncertainties and ambiguities as to the applicable professional standards. The Commission's recommendations for a code of faculty responsibilities, and for institutionalization of a career development program, should thus assist materially in alleviating some of these concerns. But improvements in substantive criteria and expectations relating to faculty performance would still remain vulnerable to criticism unless the University also undertook to establish adequate procedures by which departures from accepted standards could be formally investigated and appropriate action taken.

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Procedural formalities, to be sure, can be so unduly time-consuming and cumbersome as to be counter-productive. A well-structured procedural system should therefore emphasize institutional mechanisms for informal processing of grievances, reconciliation of misunderstandings, and rectification of inequities at a preliminary level of administration, seeking thereby to avoid the necessity for more elaborate consideration. Ideally, complaints and grievances should, wherever feasible, be adjusted with maximum informality under conditions of civility and mutual respect. Often, for example, private discussions between student and faculty member may be all that is required; in other instances, problems can be effectively mediated

76. The Scranton Commission concluded that establishment of "procedures for dealing with grievances is an aspect of university governance that deserves special attention," since escalation of emotional issues on campus often is exacerbated by absence of adequate communications. See Report of the President's Commission on Campus Unrest, pp. 204-206 (1970).

by a department chairman or dean. While these techniques should be encouraged, a need appears to exist for an agency -- outside of the particular department or college administrative structure -- at which informal screening and adjustment of complaints can take place, without the appearance of "command influence", in a setting of assured confidentiality.

To be sure, certain types of meritorious complaints against faculty members could not be satisfactorily investigated or adjusted without disclosure of the identity of the student or other complainant to the professor in question, or to his department chairman or dean, thereby involving a risk of retaliation. Others, however, (e. g., poor teaching) may relate to circumstances which affect many students alike, so that the identity of the individual complainant is of no concern. While the extent of disclosure thus necessarily must be left to determination in light of the circumstances of individual cases, it seems likely that student unwillingness to make a grievance known because of apprehension of retaliatory measures could be significantly alleviated by providing a neutral and autonomous complaint officer with whom complaints could be lodged for investigation and processing.

The principal function of the complaint officer, as conceived by this Commission, would be that of a University Ombudsman,⁷⁷ having broad powers to investigate, mediate, conciliate, and adjust complaints against faculty members, but without disciplinary authority. In his investigatory

77. The ombudsman concept as drawn from Scandinavian experience, is discussed - with comprehensive citations to the voluminous literature - in Aaron, Utah Ombudsman: The American Proposals, 1967 Utah L. Rev. 32.

role, unmeritorious complaints against faculty members could be screened out, thereby providing a measure of protection against "witch-hunts" or personal vendettas motivated by circumstances irrelevant to prescribed standards of professional academic responsibility. Complaints which, on further inquiry, appear to have possible merit could then be pursued along informal channels selected, in light of the nature of the problem, to produce reliable factual verification or refutation. When the facts appear to be without dispute, the Ombudsman would be expected to try to work out an informal but amicable disposition of the grievance. Often, it may be expected, this can be done quietly and effectively by persuasive means, and may involve little more than arranging a conference between the complaining student and the professor to clarify existing misunderstandings, obtaining the faculty member's agreement to alter or modify an unsatisfactory practice, or the voluntary initiation of minor adjustments in departmental administrative procedures.

If the matter is not handled to his satisfaction at this informal level, the complaining student should have the right to initiate formal proceedings against the faculty member, leading to possible disciplinary sanctions. Formal adjudication, however, must conform to the requirements of academic due process, including a statement of charges and disclosure of the complainant's identity, confrontation and cross-examination by the accused faculty member, and other procedural requirements deemed essential to fair and objective determination of the charges.

To some extent, the Commission recognizes, the dual system of informal and formal processing of student complaints which we contemplate already does exist at the University of Utah. The Dean of Students receives and attempts informally to adjust and mediate many types of grievances of this kind, and the Student-Faculty Relations Committee functions as a formal adjudicatory body in such matters. We believe, however, that these existing avenues for airing of grievances should be strengthened, and the applicable rules governing jurisdiction and procedures clarified. Moreover, the availability of such procedures as means for assuring compliance with the proposed code of faculty responsibilities should be more adequately publicized.

While the detailed rules and regulations for implementing this proposal should be developed only after careful study, procedural improvement should go forward concurrently with the development of a faculty code and the planning of a faculty career development program. Accordingly, the Commission proposes its

RECOMMENDATION NO. 5: The University community should develop and adopt procedural regulations designed to provide effective opportunities for (a) informal screening and adjustment of complaints against faculty members, and (b) fair and objective formal adjudication of such complaints when informal disposition efforts prove to be ineffective or unavailing.

In the event that this recommendation is approved, the Commission suggests that the following guidelines should be adhered to in the implementing regulations:

(a) A student, before filing a complaint with the University Ombudsman, should be required as a rule to seek satisfaction from the faculty member, or from the departmental chairman or college dean having administrative authority with respect to the faculty member. Failure to do so, however, should not bar further consideration of the complaint if the failure is explained to the satisfaction of the Ombudsman. The latter officer should also be charged with the responsibility of undertaking to bring about a satisfactory adjustment or settlement of the complaint, using whatever channels of communication, mediation, and conciliation may be available to him, before the complaint can be calendared for formal consideration by an appropriate tribunal.

(b) Since the status and prestige of the Ombudsman, as well as the degree of rapport and confidence he enjoys with students, will be critically important to the success of his assignment, the students should assume an important role in his selection. The person selected for this post should be provided with adequate staff assistance to enable him to conduct necessary investigations, gather evidence, and take other forms of rapid and effective action on all complaints received. In effect, the University Ombudsman should be given broad authority to determine the facts and in cooperation with deans and department chairmen, to seek to work out satisfactory resolutions of complaints by voluntary and persuasive means.

He should have no direct disciplinary authority with respect to faculty members.

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(c) A committee composed of students and faculty members should be established to conduct formal hearings, receive evidence, and make recommendations for disciplinary action in connection with those complaints which are not settled through informal means. While the proceedings before this committee should be consistent with academic due process, its function should be primarily investigatory and evaluative. That is to say, the committee should be charged with the responsibility of determining whether, on the basis of all of the evidence presented to it, probable cause exists for disciplinary sanctions against the faculty member, and if so, what level of sanction would be just and equitable. Its findings and recommendations should be filed with the Academic Vice-President (with, of course, a copy to the faculty member who is the object of the complaint). The Academic Vice-President, in turn, should be obligated expeditiously to take appropriate action on the committee's report, through the appropriate dean and department chairman. If formal disciplinary proceedings ensue, the findings and recommendations of the committee should not be regarded as in any sense either conclusive or persuasive, except so far as the faculty member in question concedes their accuracy. The files and records of evidence presented before the Student-Faculty Relations Committee, however, should be available for consideration in such disciplinary proceedings, in order to avoid duplication of effort.

78. The Student-Faculty Relations Committee would presumably be an appropriate locus of responsibility for this assignment.

(d) The success of the proposed Ombudsman-complaint procedures will depend in large part upon its visibility to students and faculty members. Accordingly, it is suggested that the administration organize a balanced program to publicize the existence and responsibilities of the Ombudsman, the code of faculty responsibilities, and the system of faculty disciplinary procedures. Such a program could include, for example, periodic publicity in the student newspaper, distribution of informational literature during student orientation, and occasional mention in faculty bulletins or in departmental and college meetings.

Respectfully submitted,

The Commission to Study Tenure

University of Utah
May 1971

EXHIBIT A

THE BOARD OF REGENTS REGULATIONS

CHAPTER IX

UNIVERSITY OF UTAH
POLICY AND PROCEDURES MANUAL

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Subject **BOARD OF REGENTS REGULATIONS - Chapter IX**
APPOINTMENTS AND TENURE

SECTION 1. AUTHORITY TO MAKE APPOINTMENTS

All appointments to the university staff shall be made by the Board of Regents, upon the nomination of the president of the university, as hereinafter provided. Every appointment shall be made solely on the basis of the individual's merit in terms of the position concerned.

SECTION 2. TERM OF APPOINTMENTS

All annual university appointments shall be for the twelve calendar months beginning July first, with such vacation privileges as are hereinafter specified. Annual salaries may be paid, at the pleasure of the Board of Regents, in twenty-six installments. Appointments to all administrative positions, including the offices of president, dean, director, chairman of division, and chairman of department, are annual appointments unless otherwise indicated by the Board of Regents at the time of appointment.

SECTION 3. NOMINATIONS FOR APPOINTMENTS -- PROCEDURE

The appointment of a president of the university shall be the duty of the Board of Regents. The Board of Regents shall call upon the Faculty Council to elect a committee to confer with the board upon the selection of the president.

The nomination of the dean of a school or college shall originate with the president, who shall confer with chairmen of the departments of the school or college concerned.

The nomination of the chairman of a department shall originate with a committee composed of the dean of the school or college to which the department is administratively assigned and the president, who shall confer with the members of the departmental staff and the deans of other schools or colleges which the department serves. Similarly, the nomination of the chairman of a division shall originate with a committee composed of the dean of the school or college to which the division is administratively assigned and the president, who shall confer with the members of the divisional staff and the deans of other schools or colleges which the division serves.

The nomination of a member of a departmental staff either for appointment or promotion shall conform to the following procedure; the professors, associate professors, and assistant professors of each department shall constitute an advisory committee on appointments and promotions for that department. The departmental chairman shall convene the committee

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APPOINTMENTS AND TENURE

annually at an appropriate time to consider the promotion of members of the departmental faculty, and at appropriate times, to consider appointments, including annual appointments after retirement age. After full consideration and discussion in a meeting of the committee members holding a rank equal to or higher than that proposed for the candidate for appointment or promotion, a vote shall be taken on each candidate who is nominated for appointment or promotion, and the departmental chairman shall transmit in writing the action of the committee, together with his recommendations, to the dean of the appropriate school or college. The dean shall report these actions, together with his recommendations, to the president.

SECTION 4. TENURE -- DEFINITIONS AND QUALIFICATIONS

To hold a position with tenure means that appointment to such a position is considered permanent and is not subject to termination or substantial reduction in status without adequate cause, provided that in all cases the individual's services continue to be needed and that funds are available to pay for them. Only the ranks of professor, associate professor, and assistant professor are tenure ranks. Tenure or the right to achieve tenure cannot be waived, provided, however, that in those unusual situations where the circumstances indicate that the probationary period hereinafter provided has not allowed sufficient time to evaluate the candidate for tenure, the University Tenure Advisory Committee may, on its initiative, extend the probationary period for a time up to but not to exceed two additional years. Appointments to instructorships, to all research and clinical positions, and to all administrative positions, including the offices of president, provost, vice president, dean, director, chairman of division, and chairman of department, are without significance for the holding or achieving of tenure.¹

¹In a report of the Academic Freedom and Tenure Committee, submitted to Faculty Council May 15, 1967, and approved that date by the council, a policy was affirmed that tenure is established in the academic department or in a school or college if such school or college is not divided into departments. In areas not designated as academic departments, schools, or colleges, appointments to tenure ranks are not made and tenure is not granted. When a member of a department transfers to another department, he loses his tenure status in his former department. The department to which he transfers may require him to serve the full probational period appropriate to his rank or may accept any or all of the years of satisfactory service acquired in the former department toward tenure.

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SECTION 5. ACHIEVEMENT OF TENURE

A faculty member achieves tenure upon completion of a probationary period of specified years of service, unless notice as prescribed in the following paragraph is given to the faculty member on or before the thirtieth day of June in his final probationary year of service. This period shall be five years for a person who begins his probationary service in the tenure rank of assistant professor and completes it in a higher tenure rank, except that no such person need serve more than three years in a higher rank. This period shall be three years for a person who begins and completes his probationary service in the tenure rank or ranks of associate professor or professor. The probationary period in any rank may, on the initiative of the University Tenure Advisory Committee, be extended for a period not to exceed two years whenever unusual circumstances indicate, in their judgment, that the standard probationary period has not provided sufficient time to properly evaluate the work of the candidate for tenure.

For purposes of tenure, a faculty member's probationary period shall commence on July 1 of the contract year in which he first teaches under the regular contract two or more full quarters of the four: summer, autumn, winter, and spring.

SECTION 6. ADVANCE NOTICE OF TERMINATION OR REDUCTION IN STATUS

Any faculty member holding an appointment without tenure whose contract the administration wishes not to renew or wishes to renew with substantially reduced status, shall be given advance notice in writing by the president, except as hereinafter provided. If the appointee is in his first year of service, such notice shall be given at least three months prior to the termination of the existing contract. If the appointee is in his second or any subsequent year of service, the intended termination of employment or reduction in status shall not become effective until twelve months after the date upon which the notice is served. In this case the terminal contract shall clearly stipulate such intention, and should the achieving of tenure be at issue, the years of service in tenure ranks shall be calculated to the date upon which the notice is served rather than to the date of proposed termination or reduction in status. The right of advance notice shall not apply to a faculty member under a contract stipulating the intention not to renew beyond the term of the contract, to a faculty member whose appointment it is proposed to terminate or modify for adequate cause as provided in the following paragraph, or to appointments to any research,

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clinical, or administrative positions, including the offices of president, vice president, dean, director, chairman of division, and chairman of department.

SECTION 7. ACADEMIC FREEDOM

Academic freedom in the pursuit and dissemination of knowledge through all media shall be maintained at the University of Utah. Such freedom shall be recognized as a right of all members of the faculty, whether of tenure or nontenure rank, of all administrative officers, and of all students. The University of Utah endorses the 1929 statement of the American Association of University Professors concerning resignations, the 1940 "Statement of Principles on Academic Freedom and Tenure" of the American Association of University Professors and the Association of American Colleges, and the 1965 "Statement on the Academic Freedom of Students" of the American Association of University Professors.

SECTION 8. COMMITTEE ON ACADEMIC FREEDOM AND TENURE

The Faculty Council shall elect by secret ballot a Committee on Academic Freedom and Tenure of twelve members from the voting members of the faculty other than the ex officio members of the Faculty Council.

The committee members shall be elected for a term of three years on a rotating basis so that the council shall annually elect four committee members to fill vacancies caused by the expiration of terms of office.

The Faculty Council shall be supplied with the names of retiring and continuing committee members by the secretary of the council ten days prior to the nominating of candidates for election as committee members. Voting shall be by secret ballot.

The committee shall convene within two weeks after its election and elect a chairman, a vice chairman, and a secretary from its members, who shall also constitute an agenda subcommittee. The vice chairman shall preside in the absence of the chairman.

It shall be the duty of the chairman or, in his absence, of the vice chairman, to call meetings of the committee at least once each quarter and more frequently if need arises. Meetings also shall be called by the chairman or, in his absence, by the vice chairman, upon the written request of three members of the committee. At least five days' written notice of all meetings of the committee and of its agenda shall be given to its members.

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It shall be the duty of the committee to make an annual report each spring quarter to the Faculty Council. It shall be the duty of the agenda sub-committee to formulate the preliminary draft of the annual report to the council and to suggest current problems for committee study. It shall also be a responsibility of the committee to keep fully informed on the most important controversies on academic freedom and tenure in higher education; to survey problems of academic freedom and tenure, including resignations at the University of Utah; and to inform the Faculty Council on these matters in its annual report.

The Academic Freedom and Tenure Committee shall have the power to investigate, either on its own initiative or at the request of any member of the university community, into any matter which the committee reasonably believes may involve violations of academic freedom at the university.

SECTION 9. TERMINATION OF APPOINTMENTS FOR CAUSE

(1) Grounds for Dismissal

- (a) Cause. A faculty member may be dismissed for adequate cause. Adequate cause is incompetence in the performance of his duties as a teacher and faculty member, or conduct which demonstrates that the faculty member lacks the ability or willingness to meet his responsibilities to the university. While the university does not serve as the overseer of the personal morality of members of the university community, grave personal misconduct may demonstrate inability or unwillingness to meet such responsibilities. Mere expression of opinions, however vehemently expressed and however controversial such opinions may be, shall not constitute adequate cause. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or of their rights as American citizens.
- (b) Medical Reasons. A faculty member with tenure may be dismissed for medical reasons which preclude the faculty member from competently performing his duties and responsibilities as teacher and faculty member.
- (c) Program Cancellation. A faculty member with tenure may be terminated or given a renewal contract with a substantially reduced status because of financial exigency or bona fide discontinuance of a program or department of instruction. The faculty member concerned will be given notice as soon as possible of the

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termination or reduction in status and shall never be given less than 12 months' notice unless, in lieu thereof, he is given severance salary for 12 months in cases of termination, or the difference between his old salary and the salary in the reduced status for 12 months in the case of reduction in status.

In cases of dismissal for adequate cause or dismissal for medical reasons the university shall follow the procedures below, which have been adapted from the 1968 Recommended Institutional Regulations on Academic Freedom and Tenure of the A.A.U.P.

The following procedures need not be observed in cases of termination or reduction in status based upon financial exigency or bona fide discontinuance of a program or department of instruction but in such cases the facts and issues concerning such termination or reduction in status shall be reviewed by the Committee on Academic Freedom and Tenure which shall report its findings and recommendations to the Faculty Council, the president, and the university's Institutional Council prior to a final decision by the Institutional Council on the termination or reduction in status.

(2) Dismissal Procedures

- (a) Dismissal of a faculty member with tenure, or with a special or probationary appointment before the end of the specified term, will be preceded by: [1] discussions between the faculty member, appropriate administrative officers, and departmental representatives, looking toward a mutual settlement; [2] a written statement of charges, framed with reasonable particularity by the president or his delegate.
- (b) A dismissal for adequate cause or medical reasons will be preceded by a written statement of charges, and the individual concerned will have the right to be heard initially by the Academic Freedom and Tenure Committee. A member of the committee will remove himself from the case, either at the request of a party or on his own initiative, if he deems himself disqualified for bias or interest. Each party will have a maximum of two challenges without stated cause.

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- [1] Service of notice of hearing with specific charges in writing will be made at least 20 days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges against him or asserts that the charges do not support a finding of adequate cause, the Academic Freedom and Tenure Committee will evaluate all available evidence and rest its recommendation upon the evidence in the record.
- [2] The committee, in consultation with the president and the faculty member, will exercise its judgment as to whether the hearing should be public or private.
- [3] During the proceedings the faculty member will be permitted to have an academic advisor and counsel of his own choice.
- [4] At the request of either party or the committee, a representative of a responsible educational association shall be permitted to attend the proceedings as an observer.
- [5] A verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member without cost to him, at his request.
- [6] The burden of proof that adequate cause exists rests with the institution, and shall be satisfied only by clear and convincing evidence in the record considered as a whole.
- [7] The committee will grant adjournments to enable either party to investigate evidence to which a valid claim of surprise is made.
- [8] The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence, and the administration will, insofar as it is possible for it to do so, secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.
- [9] The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witness cannot or will not appear, but the committee determines

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that the interests of justice require admission of his statement, the committee will identify the witness, disclose his statement and if possible provide for interrogatories.

- [10] In the hearing of charges of incompetence, the testimony shall include that of qualified faculty members from this or other institutions of higher education.
- [11] The committee will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.
- [12] The findings of fact and the decision will be based solely on the hearing record.
- [13] Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the university's Institutional Council. The president and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing. A report of the decision will also be made by the committee to the Faculty Council for its information.
- [14] If the president rejects the report, he will state his reasons for doing so, in writing, to the Academic Freedom and Tenure Committee and to the faculty member, and provide an opportunity for response before transmitting the case to the university's Institutional Council.

(3) Action by the University's Institutional Council

If dismissal, suspension without pay, or other penalty is recommended by the president, he will, on request of the faculty member, transmit to the university's Institutional Council the record of the case. The Council's review will be based on the record of the hearing by the Academic Freedom and Tenure Committee, and will provide opportunity for argument, oral or written or both, by the principals at the hearing or by their representatives. The decision of the committee will either

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be sustained, or the proceeding returned to the committee with specific objections. The committee will then reconsider, taking into account the stated objectives and receiving new evidence if necessary. The university's Institutional Council will make a final decision after study of the committee's reconsideration.

Until the final decision upon termination of an appointment has been reached, the faculty member may be suspended temporarily, or assigned to other duties in lieu of suspension, only if immediate harm to himself or others is threatened by his continuance. Before suspending a faculty member, pending an ultimate determination of his status through the hearing machinery set forth above, the administration will consult with the Committee on Academic Freedom and Tenure. Salary will continue during the period prior to final decision by the Institutional Council.

SECTION 10. CANDIDACY FOR PUBLIC OFFICE

- (a) Any full-time faculty member or employee of the University of Utah who wins his party's nomination at the primary election for an elective, full-time public office shall be on leave of absence without pay the day following the primary election.

Any full-time member of the faculty seeking such nomination shall take the summer quarter as his non-teaching quarter and may receive his regular pay during that quarter; provided, that if he becomes his party's nominee or for any other reason fails to teach during the autumn quarter, the faculty member shall repay his salary for the period beginning July 1 until the date of leave without pay.

Any faculty member on leave without pay for the purposes of candidacy who is defeated in the final election shall have the right to resume his post on the first day of January following without loss of tenure or academic rank and receive a proportionate share of his contract salary. Any employee who is defeated in the final election will be reinstated to a paid status as soon as possible. It is recognized that in some instances one's position may have been filled through necessity or even eliminated as a result of contract terminations and, therefore, reinstatement cannot be guaranteed.

- (b) Members of the faculty or other officers or employees may become candidates for or members of public school boards and serve in that office without change in their status at the University of Utah.

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- (c) Subject to any statutory prohibitions or limitations, a member of the faculty, officer, or other employee of the University of Utah shall be permitted to run for elective office as a representative or senator in the Utah State Legislature without resigning from his position at the university and without securing a leave of absence. If elected, such faculty member or other employee shall be granted a leave of absence without pay for the quarter or quarters during any part of which a regular session of the legislature is held.

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Subject FACULTY REGULATIONS - Chapter 1 - Section 19
THE UNIVERSITY FACULTY

SECTION 19. APPOINTMENTS AND PROMOTIONS

- (a) In each department the professors, associate professors and assistant professors shall constitute an advisory committee on appointments and promotions. The departmental chairman shall convene the committee annually at an appropriate time to consider the promotion of members of the departmental faculty, and, at appropriate times, to consider appointments, including annual appointments after retirement age. After full consideration and discussion in a meeting of the committee members holding a rank equal to or higher than that proposed for the candidate for appointment or promotion, a vote shall be taken on each candidate who is nominated for appointment or promotion, and the department chairman shall transmit, in writing, the action of the committee, together with his recommendations, to the dean of the appropriate school or college. The dean shall report these actions, together with his recommendations, to the president.

In all meetings of these departmental advisory committees, a quorum shall consist of two-thirds of the members entitled to participate, including those members of the department on leave of absence but able to attend. Any member on leave of absence or physically incapacitated and unable to attend the meeting shall not be counted in determining the presence of a quorum. Whenever practicable, the departmental chairman shall advise each member on leave or otherwise absent of the proposed action and shall request his written opinion and vote. An opinion of a member on leave or otherwise absent shall be disclosed at his request to members of the advisory committee at the meeting, and his vote shall be included in the report of the meeting transmitted to the dean.

- (b) This delegation of authority shall not prevent any dean or the president from initiating appointments or promotions when, in his judgment, the best interest of the university will be served by doing so. If the president or a dean initiates an appointment or a promotion, the proposed action shall first be referred to the appropriate departmental advisory committee where the procedure described under subsection (a) above shall be followed in considering the proposed appointment or promotion and in submitting a written report to the dean of the college. The dean shall then report these actions, together with his recommendations, to the president.

- (c) In order to insure a uniform policy on promotions and to permit a continuing study of promotional policies, a University Promotions Advisory Committee of nine elected members, with the president, provost, or academic vice president as ex officio chairman (as the president may designate) shall perform the following functions: (1) review all recommendations for promotions to the ranks of associate or full professor; (2) review all appointments from clinical and/or research ranks to regular academic rank in the university faculty; (3) consider the protest of any faculty member that a recommendation for promotion has been unreasonably or arbitrarily withheld by the appropriate departmental advisory committee or administrative officer; (4) discuss with the appropriate administrative officers all promotions which in the opinion of a majority of the committee are being made too quickly, on insufficient grounds, or have been too long deferred; (5) recommend to the president for consideration at the annual promotion meeting the advancement of individuals considered under subsection (a) above deemed worthy of promotion by a majority of the committee when consultation with the appropriate administrative officers has not led to the inclusion of the individual among those finally recommended for promotion, except that no recommendation for promotion shall be made by the committee against the wishes of the individual concerned; (6) formulate and recommend to the Faculty Council suitable policies on promotion.

The elected members of the committee shall consist of persons holding the academic rank of full professor and enjoying academic tenure under the university regulations elected from each of the areas represented on the Faculty Council, provided that no individual who is an ex officio member of the Faculty Council (except the chairman) or representative of the military sciences shall be eligible for membership on the committee, and provided further that this sentence shall not apply to any member elected before January 1, 1961. Voting for members of the committee shall be by areas with the same qualifications for eligibility as obtain in Faculty Council elections, and at the same time. A candidate must receive an absolute majority of the votes cast in his area.

Elections shall be for three-year terms, under a rotation to be designated by the Committee on Elections and Apportionment which will give each Faculty Council area representation for three consecutive years followed by two years without representation.

The Executive Committee shall appoint an alternate to function in the place of any elected member of the committee who resigns or will be absent from the university for one or more quarters, or expects to be absent for such a period. If a duly-elected member returns to the university, he shall assume his committee position and serve out the balance of his term.

- (d) The president shall inform the Faculty Council of proposed appointments and promotions of members of the teaching staff. The president shall recommend these appointments and promotions to the Board of Regents at its next meeting unless there is objection to any of these recommendations by a majority of the council. Objections shall be referred to the Executive Committee of the council for investigation, and the report of the Executive Committee shall be transmitted by the president to the Board of Regents. (Regents' Regulations, VIII, 2; IX, 3.)

EXHIBIT B

FACULTY REGULATIONS

CHAPTER I, SECTIONS 19 and 20

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Subject FACULTY REGULATIONS - Chapter I - Section 20
THE UNIVERSITY FACULTY

SECTION 20. RETENTION, TENURE, RESIGNATIONS, REMOVALS AND DISMISSALS

(a) The tenure, retention status, and privileges of faculty ranks shall be as follows:

- (1) Professorial ranks. Appointments to the ranks of professor, associate professor and assistant professor shall be tenure-producing appointments. Appointees to these ranks shall commit full time to the scholarly and educational endeavors carried on under the auspices of the university and shall have all of the privileges and responsibilities of faculty members. An appointee may expect the university to fulfill all contract obligations undertaken in his behalf, but must be prepared to make a complete disclosure to his dean or department chairman of all extra-university professional income and the time devoted to its accumulation.
- (2) Professorial ranks conditioned on funding. Appointments of persons who commit full time to the scholarly and educational endeavors of the university may be made to the ranks of professor, associate professor or assistant professor despite funding limitations that prevent a full university financial commitment to the appointee. Contracts reflecting such appointments shall be conditioned upon the availability of particular fund sources. Appointments made subject to such funding limitations shall be tenure-producing appointments and appointees shall have all of the privileges and responsibilities of faculty members. The period served under such conditional contracts shall be included in the probationary period required for tenure; but where appointments are made under contracts conditioned upon the availability of funds from specified sources, tenure shall be similarly conditioned. The funding condition upon tenure shall be removed where funding limitations are removed from an appointee's related contract. An appointee must be prepared to make a complete disclosure to his dean or department chairman of all extra-university professional income and the time devoted to its accumulation. Documents of appointment in this category shall be clearly marked, and the Executive Committee of the Faculty Council shall report any undue activity or shift to this category.
- (3) Clinical, Adjunct or Visiting Professors. Individuals whose primary professional activities do not relate directly to university affairs,

but who make a substantial regular contribution to the academic activities of the various colleges, may be appointed to the ranks of professor, associate professor, or assistant professor, provided the additional title of "clinical," "adjunct," or "visiting" precedes the word "professor" in the designated rank. Appointments to a "clinical," "adjunct," or "visiting" position shall not be tenure-producing. Appointees to these positions may serve as members of appointed faculty committees and shall have the privileges and responsibilities of faculty members, subject to a determination by the individual colleges and departments of the degree to which they may participate in the processes of setting department or college policy. However, they shall not have the right to vote in departments or colleges on matters relating to promotion or appointment to tenure-producing ranks. Appointees to these positions shall not be counted among the number of faculty members in a representation area for purposes of apportioning membership on the Faculty Council, shall not be eligible for election to the Faculty Council, and shall not be eligible to vote for members of the Faculty Council. The title of "clinical," "adjunct," or "visiting" shall be selected by the individual college or department in which the appointee serves.

- (4) Research professors. Individuals who participate in the university's academic program, but whose primary professional efforts are devoted to one or more research or nonacademic training projects may be appointed to the ranks of professor, associate professor or assistant professor, provided the additional title of "research" precedes the word "professor" in the designated rank. Appointment to a "research" position shall not be tenure-producing.

Appointees to these positions may serve as members of appointed faculty committees, and shall have the privileges and responsibilities of faculty members, subject to a determination by the individual colleges and departments of the degree to which they may participate in the processes of setting department or college policy. However, they shall not have the right to vote in departments or colleges on matters relating to promotion or appointment to tenure-producing ranks. Appointees to these positions shall not be counted among the number of faculty members in a representation area for purposes of apportioning membership on the Faculty Council, shall not be eligible for election to the Faculty Council, and shall not be eligible to vote for members of the Faculty Council.

- (5) Instructors. Appointments to the position of instructor may be made with the commitments and subject to the obligations described in each of the categories set forth above, except that such appointments shall not be tenure-producing. The adjectives "clinical," "adjunct," "visiting," or "research" may be appended to the rank of instructor under the same conditions or circumstances applicable to such descriptions of professorial ranks.

- (b) In each department, professors, associate professors and assistant professors, selected in the manner hereafter described, shall constitute advisory committees to make recommendations in individual cases on matters of tenure and retention. Advisory committees on retention shall consist of all tenured staff members without regard to rank and all non-tenured staff members with faculty rank higher than the candidate for retention; advisory committees on tenure shall consist of all tenured members of the department without regard to rank.

The departmental chairman shall convene the appropriate advisory committee annually to consider the retention of any faculty member serving without tenure in that department or to consider the advisability of recommending that tenure be granted to any faculty member who is serving his last probationary year preceding the acquisition of tenure. The member of the department having the longest period of tenure in the highest rank shall act as chairman of the committee. After consideration and discussion in a meeting of the appropriate advisory committees a vote shall be taken on each candidate who is nominated for retention or tenure, and the chairman of the department shall transmit in writing the action of the committee and a statement of the grounds for action, together with his recommendations, to the dean of the appropriate school or college. The dean shall report these actions, statements, and recommendations to the president who shall refer these reports to the University Tenure Advisory Committee for their recommendation.

In all meetings of these departmental advisory committees, a quorum shall consist of two-thirds of the members entitled to participate, including those members of the department on leave of absence but able to attend. Any member on leave of absence or physically incapacitated and unable to attend the meeting shall not be counted in determining the presence of a quorum. Whenever practicable, the departmental chairman shall advise each member on leave or otherwise absent of the proposed action and shall request his written opinion and vote. An opinion of a member on leave or otherwise absent shall be disclosed at his request to members of the advisory committee at the meeting, and his vote shall be included in the report of the meeting transmitted to the dean.

There shall be one or more representative student advisory committees established in each department. Where the students in a department so desire, they may delegate this committee responsibility to a college committee or committees. The appropriate student advisory committees shall be consulted concerning tenure matters and any other faculty or department policies affecting students.

- (c) The appropriate advisory committee shall have the responsibility to advise the administration, either on its own initiative or after a request by the administration, when a question arises concerning the competence or conduct of a staff member with or without tenure. In

sensitive cases involving a question of the competence or conduct of a staff member, when, in the judgment of the president, the interests of the individual or the university can best be safeguarded through a greater degree of privacy or where the matter cannot be resolved otherwise, the president may appoint an ad hoc committee of faculty members and others to give him advice and counsel. (Regents' Regulations, VIII, 2(b); IX, 4).

- (d) In order to insure a more uniform policy on tenure and to permit a continuing study of tenure policies, the University Tenure Advisory Committee of 9 elected members, with the president, provost, or academic vice president as ex officio chairman (as the president may designate) shall perform the following functions: (1) review all tenure recommendations and supporting statements submitted by the departmental advisory committees; (2) advise all appropriate administrative officers of any tenure recommendation, whether affirmative or negative, which in the opinion of a majority of the committee is being made on insufficient grounds; and (3) formulate and recommend to the Faculty Council suitable procedures and policies on tenure.

The elected members of the committee shall consist of persons holding the academic rank of full professor and enjoying academic tenure under the university regulations elected from each of the areas represented on the Faculty Council, provided that no individual who is an ex officio member of the Faculty Council (except the chairman) or representative of the military sciences shall be eligible for the membership on the committee, and provided further that this sentence shall not apply to any member elected before January 1, 1961. Voting for members of the committee shall be by areas with the same qualifications for eligibility as obtain in Faculty Council elections, and at the same time. A candidate must receive an absolute majority of the votes cast in his area.

Elections shall be for three-year terms, under a rotation to be designated by the Committee on Elections and Apportionment which will give each Faculty Council area representation for three consecutive years followed by two years without representation.

The Executive Committee shall appoint an alternate to function in the place of any elected member of the committee who resigns or will be absent from the university for one or more quarters, or expects to be absent for such a period. If a duly-elected member returns to the university, he shall assume his committee position and serve out the balance of his term.

In addition, two student members shall participate as full voting members of the committee. The students, one a graduate student and one an undergraduate student, shall be selected according to the procedures established by and under the supervision of the Associated Students University of Utah.

- (e) The president shall inform the Faculty Council of resignations, whether routine or under protest, and of proposed removals and dis-

... routine resignations shall be reported by the president to the council at its next regular meeting.

Any faculty member shall have the right to request the review of any resignation. Each request for a review shall be referred to the Committee on Academic Freedom and Tenure. All protested resignations or proposed dismissals or removals shall be referred to this committee for investigation and study. After completing its study, the committee shall make a report of its findings and transmit this report, together with its recommendations, to the council. Upon the basis of this report and the recommendations, the council shall then vote approval or disapproval of such protested resignations, removals, or dismissals.

Should the council fail to approve any protested resignation or proposed removal or dismissal, the president shall reconsider the matter with the professors and deans concerned, and before recommending to the regents the acceptance of the resignation or action for removal or dismissal, the president shall submit the reconsidered proposal to the council for its final consideration and recommendation. In all cases the recommendation of the council shall be transmitted to the Board of Regents.

A record shall be made of all proceedings of the Committee on Academic Freedom and Tenure and of the council which pertain to forced resignations, removals, and dismissals. These records shall include a roll-call vote of the council on all actions taken. A copy of this record and of the findings and recommendations of the Committee on Academic Freedom and Tenure shall be transmitted to the Board of Regents.

- (f) Should differences arise between members of the university staff, the faculty member who feels that he has been aggrieved shall be privileged to have his case reviewed up the line of executive authority. Thereafter, he shall have the right to bring the matter to the attention of the Committee on Academic Freedom and Tenure. This committee shall have full power to investigate the matter in question, including the power to appoint a subcommittee for the purpose of bringing about a reconciliation. The committee shall have the right to make a report and recommendations to the president. Copies of the report and recommendations shall be sent to the aggrieved member, the executive officers concerned, and the Faculty Council.

Any one of the parties involved in the controversy shall have the right to appeal the matter to the Faculty Committee of the Board of Regents if a settlement of the case has not been reached under the above procedure.

This subsection shall not be applicable to differences concerning promotions.

- (g) The president may refer to the Faculty Council any matters concerning academic freedom and tenure upon which he feels it would be well to have an opinion. The council shall refer the matters involved to the Committee on Academic Freedom and Tenure for investigation, study, and report to the council. (Regents' Regulations, VIII, 2; IX, 4.)

EXHIBIT C

A.A.U.P.: 1940 STATEMENT OF PRINCIPLES
AND INTERPRETIVE COMMENTS

Academic Freedom and Tenure

1940 Statement of Principles and Interpretive Comments

"FROM: A. A. U. P. Bulletin,
Vol. 56, pp. 323-326,
(Sept. 1970)."

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement is known to the profession as the 1940 Statement of Principles on Academic Freedom and Tenure.

The 1940 Statement is printed below, followed by Interpretive Comments as developed by representatives of the American Association of University Professors and the Association of American Colleges during 1969.

The following organizations officially endorsed the 1940 Statement in the years indicated.

Association of American Colleges	1941	Council for the Advancement of Small Colleges	1965
American Association of University Professors	1941	Mathematical Association of America	1965
American Library Association (adapted for librarians)	1946	Arizona Academy of Science	1965
Association of American Law Schools	1946	American Risk and Insurance Association	1965
American Political Science Association	1947	Academy of Management	1965
American Association of Colleges for Teacher Education*	1950	American Catholic Historical Association	1966
American Association for Higher Education ^b	1950	American Catholic Philosophical Association	1966
Eastern Psychological Association	1950	Association of State Colleges and Universities	1966
American Philosophical Association:		Association for Education in Journalism	1966
Western Division	1952	Western History Association	1966
Eastern Division	1953	Mountain-Plains Philosophical Conference	1966
Southern Society for Philosophy and Psychology	1953	Society of American Archivists	1966
American Psychological Association	1961	Southeastern Psychological Association	1966
American Historical Association	1961	Southern Speech Association	1966
Modern Language Association of America	1961	American Association for the Advancement of Slavic Studies	1967
American Economic Association	1962	American Mathematical Society	1967
American Farm Economic Association	1962	College Theology Society	1967
American Philosophical Association, Pacific Division	1962	Council on Social Work Education	1967
Midwest Sociological Society	1963	American Association of Colleges of Pharmacy	1967
Organization of American Historians ^c	1963	American Academy of Religion	1967
American Philological Association	1963	American Catholic Sociological Society	1967
American Council of Learned Societies	1963	American Society of Journalism School Administrators	1967
Speech Association of America	1963	John Dewey Society for the Study of Education and Culture	1967
American Sociological Association	1963	South Atlantic Modern Language Association	1967
Southern Historical Association	1963	American Finance Association	1967
American Studies Association	1963	Catholic Economic Association	1967
Association of American Geographers	1963	United Chapters of Phi Beta Kappa	1968
Southern Economic Association	1963	American Society of Christian Ethics	1968
Classical Association of the Middle West and South	1964	American Association of Teachers of French	1968
Southwestern Social Science Association	1964	Appalachian Finance Association	1968
Archaeological Institute of America	1964	Association of Teachers of Chinese Language and Culture	1968
Southern Management Association	1964	American Society of Plant Physiologists	1968
American Educational Theatre Association	1964	University Film Association	1968
South Central Modern Language Association	1964	American Dialect Society	1968
Southwestern Philosophical Society	1964	American Speech and Hearing Association	1968
		Association of Social and Behavioral Scientists	1968
		National College Physical Education Association for Men	1969
		American Real Estate and Urban Economics Association	1969

* Endorsed by predecessor, American Association of Teachers Colleges, in 1941.

^b Formerly the Association for Higher Education, National Education Association.

^c Formerly the Mississippi Valley Historical Association.

History of Education Society	1969
Council for Philosophical Studies	1969
American Physicists Association	1969
American Musicological Society	1969
American Association of Teachers of Spanish and Portuguese	1969
Texas Junior College Teachers Association	1970
College Art Association of America	1970
Society of Professors of Education	1970
American Anthropological Association	1970
The American Association of Theological Schools	1970

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher¹ or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights. [1]^a

Tenure is a means to certain ends; specifically: (1) Freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic Freedom

(a) The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

(b) The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. [2] Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment. [3]

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate,

¹ The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

^a Bold face numbers in brackets refer to Interpretive Comments which follow.

should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman. [4]

Academic Tenure

(a) After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

(1) The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.

(2) Beginning with appointment to the rank of full-time instructor or a higher rank, [5] the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. [6] Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period. [7]

(3) During the probationary period a teacher should have the academic freedom that all other members of the faculty have. [8]

(4) Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an adviser of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution. [9]

(5) Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

Interpretive Comments

Following extensive discussions on the 1940 Statement of Principles on Academic Freedom and Tenure with leading educational associations and with individual faculty members and administrators, a Joint Committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the Joint Committee felt the preferable approach was to formulate interpretations of the Statement in terms of the experience gained in implementing and applying the Statement for over thirty years and of adapting it to current needs.

The Committee submitted to the two Associations for their consideration the following "Interpretive Comments." These interpretations were approved by the Council of the American Association of University Professors in April, 1970, and endorsed by the Fifty-sixth Annual Meeting as Association policy.

In the thirty years since their promulgation, the principles of the 1940 *Statement of Principles on Academic Freedom and Tenure* have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that Association either alone or in conjunction with the Association of American Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 Statement, to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 Statement is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 Statement; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents* 385 U.S. 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

The numbers refer to the designated portion of the 1940 Statement on which interpretive comment is made.

1. The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both Asso-

ciations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to the professor in his utterances as a citizen, in the exercise of his responsibilities to the institution and students, and in his conduct when resigning from his institution or when undertaking government-sponsored research. Of particular relevance is the *Statement on Professional Ethics*, adopted by the Fifty-second Annual Meeting of the AAUP as Association policy and published in the *AAUP Bulletin* (Autumn, 1966, pp. 290-291).

2. The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for the teacher to avoid persistently intruding material which has no relation to his subject.

3. Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure.

4. This paragraph is the subject of an Interpretation adopted by the sponsors of the 1940 Statement immediately following its endorsement which reads as follows:

If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a) (4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph (c) of the 1940 Statement should also be interpreted in keeping with the 1964 *Committee A Statement on Extramural Utterances* (*AAUP Bulletin*, Spring, 1965, p. 29) which states inter alia: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his position. Extramural utterances rarely bear upon the faculty member's fitness for his position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph V of the *Statement on Professional Ethics* also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows:

As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a

profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary as well as to the tenured teacher, but also to all others, such as part-time and teaching assistants, who exercise teaching responsibilities.

5. The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of his specific title.*

6. In calling for an agreement "in writing" on the amount of credit for a faculty member's prior service at other institutions, the Statement furthers the general policy of full understanding by the professor of the terms and conditions of his appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution.

7. The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 Statement with respect to the termination of services of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the *Standards for Notice of Nonreappointment*, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

(1) *Not later than March 1 of the first academic year of service*, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

* For a discussion of this question, see the "Report of the Special Committee on Academic Personnel Ineligible for Tenure," *AAUP Bulletin*, Autumn, 1966, pp. 280-282.

(2) *Not later than December 15 of the second academic year of service*, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.

(3) At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and individuals, are described in the *Statement on Recruitment and Resignation of Faculty Members*, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

8. The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during his probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the *Recommended Institutional Regulations on Academic Freedom and Tenure*, prepared by the American Association of University Professors.

9. A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, jointly approved by the American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 Statement is silent.

The 1958 Statement provides: "Suspension of the faculty member during the proceedings involving him is justified only if immediate harm to himself or others is threatened by his continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

EXHIBIT D

1966 STATEMENT ON PROFESSIONAL ETHICS

Other Statements

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1966 Statement on Professional Ethics

In March, 1965, Committee B distributed a draft of a Statement on Professional Ethics to all Association chapters and conferences for their criticism. The Statement was also published in the Summer, 1965, *Bulletin*, with a request for individual comments.

In October, 1965, the Committee reported to the Council on the membership response to the Statement, and received guidance and instructions to proceed to another draft. It met in December, 1965, and in light of both Council and membership reaction produced a new draft, which was then submitted to the members of the Council for a preliminary response. A third draft was then printed in the Spring, 1966, *Bulletin*, and again membership reaction was solicited.

In April, 1966, the Council approved the following Statement on Professional Ethics, and later that same month the Fifty-Second Annual Meeting at Atlanta adopted the Statement as Association policy.

The members of Committee B who prepared the following statement are: William H. McPherson (Labor and Industrial Relations, University of Illinois), *Chairman*, David M. Bevington (English, University of Virginia), John A. Christie (English, Vassar College), Philip Denenfeld (English, Washington Office), Kenneth E. Eble (English, University of Utah), Joseph M. Nygaard (Education, Butler University), Henry T. Yost (Biology, Amherst College).

Introduction

From its inception, the American Association of University Professors has recognized that membership in the academic profession carries with it special responsibilities. The Association has consistently affirmed these responsibilities in major policy statements, providing guidance to the professor in his utterances as a citizen, in the exercise of his responsibilities to students, and in his conduct when resigning from his institution or when undertaking Government-sponsored research.¹ The Statement on Professional Ethics that follows, necessarily presented in terms of the ideal, sets forth those general standards that serve as a reminder of the vari-

¹ 1964 *Committee A Statement on Extra-Mural Utterances* (Clarification of sec. 1c of the 1940 *Statement of Principles on Academic Freedom and Tenure*)

1966 *Proposed Statement on the Academic Freedom of Students*

1961 *Statement on Recruitment and Resignation of Faculty Members*

1964 *On Preventing Conflicts of Interest in Government-Sponsored Research*

ety of obligations assumed by all members of the profession. For the purpose of more detailed guidance, the Association, through its Committee B on Professional Ethics, intends to issue from time to time supplemental statements on specific problems.

In the enforcement of ethical standards, the academic profession differs from those of law and medicine, whose associations act to assure the integrity of members engaged in private practice. In the academic profession the individual institution of higher learning provides this assurance and so should normally handle questions concerning propriety of conduct within its own framework by reference to a faculty group. The Association supports such local action and stands ready, through the General Secretary and Committee B, to counsel with any faculty member or administrator concerning questions of professional ethics and to inquire into complaints when local consideration is impossible or inappropriate. If the alleged offense is deemed sufficiently serious to raise the possibility of dismissal, the procedures should be in accordance with the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.

The statement

I. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning in his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of stu-

Other Statements

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dents reflects their true merit. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

IV. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution, provided they do not contravene academic freedom, he maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions.

V. As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

EXHIBIT E

FREEDOM AND RESPONSIBILITY

REPORTS

A Statement of the Association's Council: Freedom and Responsibility

The following Statement was adopted by the Council of the American Association of University Professors at its meeting of October 30-31, 1970.

For more than half a century the American Association of University Professors has acted upon two principles: that colleges and universities serve the common good through learning, teaching, research, and scholarship; and that the fulfillment of this function necessarily rests upon the preservation of the intellectual freedoms of teaching, expression, research, and debate. All components of the academic community have a responsibility to exemplify and support these freedoms in the interests of reasoned inquiry.

The 1940 *Statement of Principles on Academic Freedom and Tenure* asserts the primacy of this responsibility. The 1966 *Statement on Professional Ethics* underscores its pertinency to the individual faculty member and calls attention to his responsibility, by his own actions, to uphold his colleagues' and his students' freedom of inquiry and to promote public understanding of academic freedom. The *Joint Statement on Rights and Freedoms of Students* emphasizes the shared responsibility of all members of the academic community for the preservation of these freedoms.

Continuing attacks on the integrity of our universities and on the concept of academic freedom itself come from many quarters. These attacks, marked by tactics of intimidation and harassment and by political interference with the autonomy of colleges and universities, provoke harsh responses and counterresponses. Especially in a repressive atmosphere, the faculty's responsibility to defend its freedoms cannot be separated from its responsibility to uphold those freedoms by its own actions.

✓ Membership in the academic community imposes on students, faculty members, administrators, and trustees an obligation to respect the dignity of others, to acknowledge their right to express differing opinions, and to foster and

defend intellectual honesty, freedom of inquiry and instruction, and free expression on and off the campus. The expression of dissent and the attempt to produce change, therefore, may not be carried out in ways which injure individuals or damage institutional facilities or disrupt the classes of one's teachers or colleagues. Speakers on campus must not only be protected from violence, but given an opportunity to be heard. Those who seek to call attention to grievances must not do so in ways that significantly impede the functions of the institution.

Students are entitled to an atmosphere conducive to learning and to even-handed treatment in all aspects of the teacher-student relationship. Faculty members may not refuse to enroll or teach students on the grounds of their beliefs or the possible uses to which they may put the knowledge to be gained in a course. The student should not be forced by the authority inherent in the instructional role to make particular personal choices as to political action or his own part in society. Evaluation of students and the award of credit must be based on academic performance professionally judged and not on matters irrelevant to that performance, whether personality, race, religion, degree of political activism, or personal beliefs.

It is a teacher's mastery of his subject and his own scholarship which entitle him to his classroom and to freedom in the presentation of his subject. Thus, it is improper for an instructor persistently to intrude material which has no relation to his subject, or to fail to present the subject matter of his course as announced to his students and as approved by the faculty in their collective responsibility for the curriculum.

Because academic freedom has traditionally included the instructor's full freedom as a citizen, most faculty members face no insoluble conflicts between the claims of politics, social action, and conscience, on the one hand,

and the claims and expectations of their students, colleagues, and institutions, on the other. If such conflicts become acute, and the instructor's attention to his obligations as a citizen and moral agent precludes the fulfillment of substantial academic obligations, he cannot escape the responsibility of that choice, but should either request a leave of absence or resign his academic position. ✓

II

The Association's concern for sound principles and procedures in the imposition of discipline is reflected in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, the 1968 *Recommended Institutional Regulations on Academic Freedom and Tenure*, and the many investigations conducted by the Association into disciplinary actions by colleges and universities.

The question arises whether these customary procedures are sufficient in the current context. We believe that by and large they serve their purposes well but that consideration should be given to supplementing them in several respects:

First, plans for insuring compliance with academic norms should be enlarged to emphasize preventive as well as disciplinary action. Toward this end the faculty should take the initiative, working with the administration and other components of the institution, to develop and maintain an atmosphere of freedom, commitment to academic inquiry, and respect for the academic rights of others. The faculty should also join with other members of the academic community in the development of procedures to be used in the event of serious disruption, or the threat

of disruption, and should insure its consultation in major decisions, particularly those related to the calling of external security forces to the campus.

Second, systematic attention should be given to questions related to sanctions other than dismissal, such as warnings and reprimands, in order to provide a more versatile body of academic sanctions.

Third, there is need for the faculty to assume a more positive role as guardian of academic values against unjustified assaults from its own members. The traditional faculty function in disciplinary proceedings has been to assure academic due process and meaningful faculty participation in the imposition of discipline by the administration. While this function should be maintained, faculties should recognize their stake in promoting adherence to norms essential to the academic enterprise.

Rules designed to meet these needs for faculty self-regulation and flexibility of sanctions should be adopted on each campus in response to local circumstances and to continued experimentation. In all sanctioning efforts, however, it is vital that proceedings be conducted with fairness to the individual, that faculty judgments play a crucial role, and that adverse judgments be founded on demonstrated violations of appropriate norms. The Association will encourage and assist local faculty groups seeking to articulate the substantive principles here outlined or to make improvements in their disciplinary machinery to meet the needs here described. The Association will also consult and work with any responsible group, within or outside the academic community, that seeks to promote understanding of and adherence to basic norms of professional responsibility so long as such efforts are consistent with principles of academic freedom.

EXHIBIT F

GUIDE TO RETENTION AND TENURE

UNIVERSITY OF UTAH

Faculty Council
February 3, 1969

Guide to Retention and Tenure

The 1940 AAUP statement of principles, to which the Regents' Regulations, Chapter IX, Section 7, subscribe, describes tenure as the means of assuring "freedom of teaching and research and of extramural activities." To provide this assurance, the University protects the faculty member's right to freely discuss his fields of special competence in the classroom and in publications, and to a sufficient degree of economic security. Thus, tenure is intimately related to academic freedom and should be given only to those the University believes have the qualifications, both professional and personal, to use that freedom responsibly.

Since the University assumes what may be a lifelong commitment to the professional and economic life of a faculty member when he is given tenure, the decision as to whether tenure should be given is of the utmost importance for the future of the University. In its total impact this decision transcends the significance of annual salary increases and even promotions in rank, for the University's relationships to its students, publics, and funding agencies for years to come are affected by the decisions made at this time.

It is for this reason that all discussions about tenure should not center on the question used when the man was employed: "Does he have the training and promise to become an outstanding member of the faculty?" Nor should these discussions center on the personal relations which develop as a result of working together: "Is he congenial?" Rather, they should center on the question of demonstrated competence: "Has he shown the skills and interests of a scholar, the abilities and dedication of a teacher, the devotion to the University and all it stands for which would justify the University's lifelong commitment to guarantee his academic freedom and economic security?" Unless this question can be answered, not only affirmatively but enthusiastically, a faculty member should not be recommended for tenure.

Nor should the question of a faculty member's competence be raised first when the tenure question is being decided. At every year's discussion on retention during the probationary period, the departmental committee should frankly discuss the faculty member's qualifications as a teacher and scholar, recording their candid judgments and considered recommendations on the retention forms provided. In addition, each year the department chairman should inform the candidate of the committee's judgment, including their reservations and recommendations. In this way, the judgment concerning tenure will be extended over the total probationary period and will be known continually by both the candidate and the University.

Retention and Tenure

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Faculty Council
February 3, 1969

Only those faculty members holding the ranks of Assistant Professor, Associate Professor, and Professor are entitled to the rights and privileges of a tenured position. All those who hold instructorships, lectureships, research, adjunct, clinical, and visiting positions are specifically excluded from holding or achieving tenure, as are those who hold administrative positions without other faculty status. The probationary period for a new faculty member begins the first contract year in which he teaches two of the four quarters and, for a person who begins his employment at the University as an Assistant Professor, is for his next five years of active service; for one who begins as an Associate Professor or Professor, is for his next three years of active service. At the end of these probationary periods, the right to tenure cannot be waived nor can the decision whether to grant tenure be postponed, except that in unusual circumstances the University Tenure Advisory Committee may extend the period for an additional one or two years. Every contract year the faculty member is appointed as an Assistant Professor, Associate Professor or Professor in a department counts as a part of the probationary period regardless of what percentage of his salary originates from the department's budget. When a faculty member's status in the department changes enough that the departmental advisory committee questions whether his involvement in departmental affairs should be counted toward tenure, a change to a nontenure producing appointment should be considered, and the decision recorded on the contract and communicated to the faculty member before the beginning of the next academic year. A leave of absence for a faculty member eligible for tenure shall not count towards tenure unless the leave is of such a professional nature as to be considered tenure producing. The departmental advisory committee prior to the beginning of the year's leave, shall specifically recommend to the University Tenure Advisory Committee that the year be counted towards tenure.

In those cases involving appointment of a faculty member who has tenure at another university, the original appointment at this University may carry tenure. Such appointments require the recommendation of the departmental tenure advisory committee, the Dean and the University Tenure Advisory Committee. All such appointments carrying tenure should be reported to the Faculty Council at the time of the original appointment.

All retention and tenure recommendations originate with the department in which the faculty member has an appointment; in the case of dual appointments both departments must consider the man's qualifications. In each department, Professors, Associate Professors and Assistant Professors, selected in the manner hereafter described, shall constitute advisory committees to make recommendations in individual cases on matters of tenure and retention. Advisory committees on retention shall consist of all tenured staff members without regard to rank and all nontenured staff members with faculty rank higher than the candidate for retention; advisory committees on tenure shall consist of all tenured members of the department without regard to rank. The departmental chairman shall convene the committees, although the faculty

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member who has held tenure for the longest period of time in the highest rank shall act as chairman. If the department chairman does not have tenure, the committee will be convened by the senior member of the departmental staff. A quorum shall consist of two-thirds of the members entitled to participate, although members on leave or those physically unable to attend the meeting will not count in determining the quorum. Those on leave should be notified of the proceedings and their written opinion and vote elicited. This information then should become a part of the meeting.

In this meeting the committee should discuss with both candor and justice the faculty member's qualifications and achievements. Such considerations as his interest in teaching and his performance as a teacher, the quality and number of his publications, as well as the reputation of the journal or publishing house which published them, past and current contributions to the department, the University, and the community, and the basis for expecting continued contributions and professional growth should be among the factors which should be discussed. More subjective considerations such as the effect of the individual's personality on his colleagues and students also are relevant, as are questions concerning the relationships between tenure and promotion. A committee should always recognize that potentiality may take longer to develop in some faculty members, that some research or scholarship might be concerned with particularly difficult or unproductive problems, and that progress in some areas may be retarded because of extra service in other areas. But, after full consideration of all the qualifications caused by diverse human beings, the committee must always ask itself whether this faculty member has demonstrated the qualities of mind and temperament which would justify the University's guaranteeing his lifelong freedom and security.

After the meeting, the chairman of the department shall transmit in writing the action of the committee and a statement of the grounds for action, together with his own recommendations, to the Dean of his college. The Dean then shall report these recommendations and his own to the Academic Vice President. He, then, will refer all recommendations for retention and tenure to the University Tenure Advisory Committee which will review all recommendations and advise the Academic Vice President on any recommendation, whether affirmative or negative, which in the opinion of a majority of the committee is being made on insufficient grounds, and its own recommendation in each case. The decision regarding tenure will be made by the President of the University and reported to the Faculty Council before the final decision is made by the University's Institutional Council.

Granting tenure implies a lifelong commitment by the University to defend the faculty member's academic freedom. Likewise, the faculty member who is given tenure makes an equally strong lifelong commitment to serve his students, his colleagues, his discipline and the University in a manner be-

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fitting an academic man. His colleagues and the appropriate administrative officers should be aware constantly of both commitments, and when either is broken, when the University fails to protect his academic freedom or the faculty member fails to act as a responsible and dedicated teacher and scholar, then appropriate steps should be taken to strengthen those commitments.

Promotions and Tenure Advisory Committee

A. Russell Mortensen
Kenneth E. Eble
Keith M. Engar
Charles L. Alley
John R. Ward
Ray R. Canning
B. Gale Dick
Ewart A. Swinyard
Charles H. Monson
Ex officio chairman

EXHIBIT G

TENURE ARTICLES FROM THE EDUCATION INDEX

TENURE

ARTICLES FROM THE EDUCATION INDEX 1965-1970

- Academic freedom and tenure: Adelphi University. AAUP Bulletin 53: 278-91 S '67.
- Academic freedom and tenure: Amarillo College. AAUP Bulletin 53: 292-302 S '67.
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- 25589 Factors Related to Employment of Iowa State University Graduates in Agricultural Education. p.1187.
- 27489 Relationships Between Conforming Judgement and Employee Rank and Between Conforming Judgment and Dogmatism in an Employment Group. p.1235.
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- 27823 Academic Freedom, Tenure, and Responcibility for Faculty Members in Texas Public Colleges and Universities. Adopted: October 16, 1967. p.1244.
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- 28724 Faculty Power and the U. S. Campus. p.1267.
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- 30212 The Teacher's Day in Court: Review of 1967. An Annual Compilation. School Law Series. p.1304
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EXHIBIT H

UNIVERSITY TENURE ADVISORY COMMITTEE:
PROCEDURES FOR REVIEWING RECOMMENDATIONS FOR
TERMINATION OF FACULTY MEMBERS WITHOUT TENURE

Procedures for Reviewing
Recommendations for Termination
of Faculty Members without Tenure

1. The word termination as used herein shall mean a decision not to renew the contract of a faculty member at the end of the current contract period, as distinguished from the meaning of the word discharge which shall mean a decision to dismiss a faculty member for cause before the expiration of the current contract period.
2. If a faculty member without tenure wishes to petition the University Tenure Advisory Committee to review a departmental or an administrative recommendation that he be terminated from the faculty, he shall submit a petition in writing to the Academic Vice President who serves as ex officio chairman of that committee. Such written petition shall state the basic conclusions of fact and the grounds upon which the petitioner seeks a review as defined in Section 3 of these procedures. The petitioner shall have the right to withdraw his petition at any time during the proceedings.
3. In reviewing a faculty member's petition of appeal from the termination recommendation of his colleagues, his department chairman, and/or his dean, the University Tenure Advisory Committee shall begin with a strong presumption in favor of the judgment and decision of the petitioner's professional peers on the questions of his professional competence, the value of his past contributions to the department, and the nature and value of his potential contributions to the department if he were to be retained. This presumption can be overcome only by a clear and convincing showing that the recommendation of the departmental tenure advisory committee, the department chairman, and/or the dean was arbitrary, capricious, and unreasonable in that the evidence available to them was such that a reasonable person could not have reached a conclusion to recommend termination, or by a clear and convincing showing that the decision of the departmental tenure advisory committee, the department chairman, and/or the dean was discriminatory with respect to race, creed, color, sex, or national origin.

In addition to the issues defined in the first paragraph of this section, the University Tenure Advisory Committee shall have the jurisdiction to review the procedures followed by the departmental advisory committee, department chairman, and/or the dean in making their decision, and to determine whether such procedures were consistent with the procedures described in Faculty Regulations, Chapter I, Section 20(b) and without defects which operated to deny the petitioner basic fairness and due process in the decision to recommend his termination.

4. Upon receipt of a nontenured faculty member's petition for a review of his recommended termination, the Academic Vice President shall forward a copy of the petition to the dean of the college concerned. The dean shall notify the chairman of the department and the departmental tenure advisory committee. Within ten days after receipt of the petition, the dean shall deliver to the Academic Vice President a written response to the petition from the departmental tenure advisory committee, the department chairman, and the dean. The Academic Vice President shall forward to the petitioner a copy of the response.
5. After considering the petition and the responses described above, the University Tenure Advisory Committee shall make a determination of whether the documents indicate that reasonable grounds exist to challenge the department's and/or the dean's action on the ground that the department and/or the dean failed to follow appropriate procedures or that the decision was arbitrary, capricious, and unreasonable, or based upon grounds that were discriminatory with respect to race, creed, color, sex, or national origin. This determination will be communicated in writing to both the petitioner and the dean. The dean shall advise the department chairman and the chairman of the departmental tenure advisory committee of the University Tenure Advisory Committee's determination.
6. If the University Tenure Advisory Committee determines that there is probable cause to challenge the decision on the grounds described above, the chairman of that committee will arrange to convene the committee at the earliest possible date for a hearing with the petitioner and the dean. If possible, the hearing will be conducted in a single closed session. Both the petitioner and the dean will have the right to invite up to, but not more than, four witnesses to accompany him at the hearing. Additional witnesses may be heard at the discretion of the committee. In addition to witnesses, the petitioner and the dean may each invite a counselor to appear with him or represent him at the hearing. At the end of the hearing the University Tenure Advisory Committee will meet in Executive Session to make its decision and the chairman of the committee shall advise both the petitioner and the dean of that decision in writing. (See footnote, p.3)
7. The University Tenure Advisory Committee shall concern itself only with a decision to terminate a nontenured faculty member at the end of the current contract period for reasons that do not raise an issue of violation of academic freedom.

The University Tenure Advisory Committee shall not have jurisdiction over the discharge of a nontenured faculty member within a contract period, or over the termination of a nontenured faculty member to the extent that the facts surrounding that termination raise an issue of academic freedom. In

these instances jurisdiction to hear such matters shall be vested exclusively in the Academic Freedom and Tenure Committee.

Footnote:

If a recommendation of termination is upheld by the University Tenure Advisory Committee and accepted by the President, the nontenured faculty member shall be entitled to written notice as follows:

If the faculty member is in his first year of service, such notice shall be given at least three months prior to the expiration of the existing contract. If the faculty member is in his second or any subsequent year of service, the intended termination of employment shall not become effective until twelve months after the date upon which the notice is served. (see Regents Regulations, Chapter IX, Section 6)

Notice of termination is not required for a faculty member with a one-year appointment.

TENURE ADVISORY COMMITTEE

Charles L. Alley
Ray R. Canning
Audean W. Cowley
A. C. Emery
Robert L. Erdman
John M. Legler
John L. Squires
Ewart A. Swinyard
John R. Ward
Jeffrey T. Winston
J. Boyer Jarvis, ex officio

RESULTS OF FACULTY QUESTIONNAIRE

APPENDIX I

TABLE 1
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (# 6):
 ARE THERE ANY FULL-TIME MEMBERS OF YOUR DEPARTMENTAL FACULTY THAT YOU
 THINK SHOULD BE DISMISSED?

SUB-GROUP	YES		NO		TOTAL		MEAN
	No.	%	No.	%	No.	%	
Total Sample	191	30.7	431	69.3	622	100.0	1.69
Rank							
Professor	72	33.6	142	66.4	214	100.0	1.66
Associate Professor	43	28.5	108	71.5	151	100.0	1.72
Assistant Professor	58	29.6	138	70.4	196	100.0	1.70
Instructor	16	29.6	38	70.4	54	100.0	1.70
Other Faculty	1	33.3	2	66.7	3	100.0	1.67
Chairman Status							
Chairman	15	25.4	44	74.6	59	100.0	1.75
Not Chairman	174	31.2	383	68.8	557	100.0	1.69
Tenure Status							
Tenured	101	32.3	212	67.7	313	100.0	1.68
Not Tenured	90	29.6	214	70.4	304	100.0	1.70
Utah Degrees							
None	121	31.5	263	69.5	384	100.0	1.68
Undergraduate Only	19	37.3	32	62.7	51	100.0	1.63
At Least One Graduate Degree	51	28.2	130	71.8	181	100.0	1.72
Employment Outside University							
Never	35	22.7	119	77.3	154	100.0	1.77
One to Three Years	65	36.1	115	63.9	180	100.0	1.64
Four to Ten Years	58	33.0	118	67.0	176	100.0	1.67
Eleven Years or More	20	28.6	50	71.4	70	100.0	1.71

Please refer to original Questionnaire for significance of mean

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TABLE 1A
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971
RESPONSE TO THE FACULTY TENURE SURVEY QUESTION (#6A):
"ARE THERE ANY FULL-TIME MEMBERS OF YOUR DEPARTMENTAL FACULTY THAT YOU
THINK SHOULD BE DISMISSED? HOW MANY?"

SUB-GROUP	NONE		(1)		(2)		(3+)		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	431	69.3	81	13.0	63	10.1	47	7.6	622	100.0	.63
Rank											
Professor	142	66.0	32	14.9	26	12.1	15	7.0	215	100.0	.62
Associate Professor	108	72.0	18	12.0	14	9.3	10	6.7	150	100.0	.64
Assistant Professor	138	70.4	23	11.7	19	9.7	16	8.2	196	100.0	.63
Instructor	38	70.4	6	11.1	4	7.4	6	11.1	54	100.0	.65
Other Faculty	2	66.7	1	33.3	--	--	--	--	3	100.0	.33
Chairman Status											
Chairman	44	74.6	8	13.6	5	8.5	2	3.4	59	100.0	.41
Not Chairman	383	68.8	72	12.9	57	10.2	45	8.1	557	100.0	.65
Tenure Status											
Tenured	212	67.7	45	14.4	37	11.8	19	6.1	313	100.0	.61
Not Tenured	214	70.6	35	11.6	26	8.6	28	9.2	303	100.0	.66
Utah Degrees											
None	263	68.5	50	13.0	44	11.4	27	7.0	384	100.0	.66
Undergraduate Only	32	62.7	8	15.7	8	15.7	3	5.9	51	100.0	.65
At Least One Graduate Degree	130	71.8	23	12.7	11	6.1	17	9.4	181	100.0	.58
Employment Outside University											
Never	119	76.8	16	10.3	13	8.4	7	4.5	155	100.0	.50
One to Three Years	115	63.9	29	16.1	18	10.0	18	10.0	180	100.0	.73
Four to Ten Years	118	67.4	20	11.4	20	11.4	17	9.7	175	100.0	.71
Eleven Years or More	50	71.4	10	14.3	7	10.0	3	4.3	70	100.0	.50

Please refer to original Questionnaire for significance of mean

TABLE 2
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971
RESPONSE TO FACULTY TENURE SURVEY QUESTION (# 7):
"OF THOSE FACULTY WHOM YOU THINK SHOULD BE DISMISSED GIVE AS MANY
REASONS AS YOU CAN THINK OF THAT YOU HAVE CONSIDERED IN MAKING THIS DECISION."

SUB-GROUP	Poor Teaching		Poor Student Relations		Poor Departmental Relations		Poor Scholarship		Income- ptence		Does Not Keep Up To Date		Does Not Meet Com- mitment to Univ.		Bad Conduct		Other		Total -- % +		Total Re- spon- dents
	No. #	%	No. #	%	No. #	%	No. #	%	No. #	%	No. #	%	No. #	%	No. #	%	No. #	%	No. #	%	
Total Sample	83	40.3	41	19.9	44	21.4	79	38.4	60	29.1	21	10.2	39	18.9	24	11.6	87	42.2	478	232.0	206
Rank																					
Professor	35	43.8	11	13.8	17	21.2	31	38.8	23	28.8	6	7.5	15	18.8	10	12.5	31	38.8	179	224.0	80
Associate Professor	20	43.5	8	17.4	10	21.7	23	50.0	9	19.6	3	6.5	6	13.0	7	15.2	21	45.6	107	232.5	46
Assistant Professor	21	34.4	18	29.5	14	23.0	20	32.8	21	34.4	8	13.1	14	23.0	6	9.8	25	41.0	147	241.0	61
Instructor	6	35.3	4	23.5	3	17.6	4	23.5	7	41.2	4	23.5	3	17.7	1	5.9	9	52.9	41	241.1	17
Other Faculty	--	0.0	--	0.0	--	0.0	--	0.0	--	0.0	--	0.0	--	0.0	--	0.0	1	100.0	1	100.0	1
Chairman Status																					
Chairmen	7	41.2	2	11.8	3	17.7	7	41.2	7	41.2	1	5.9	2	11.8	3	17.7	4	23.5	36	212.0	17
Not Chairmen	76	40.6	39	20.9	41	21.9	72	38.5	51	27.3	20	10.7	37	19.8	21	11.2	81	43.3	438	234.2	187
Tenure Status																					
Tenured	47	42.3	21	18.9	25	22.5	45	40.5	25	22.5	5	4.5	22	19.8	14	12.6	45	40.5	249	224.1	111
Not Tenured	36	38.3	20	21.3	19	20.2	34	36.2	34	36.2	16	17.0	17	18.1	10	10.6	42	44.7	228	242.6	94
Utah Degrees																					
None	54	40.9	20	15.2	30	22.7	59	44.7	42	31.8	15	11.4	22	16.7	10	7.8	50	37.9	302	229.1	132
Undergraduate Only	4	19.1	3	14.3	5	23.8	4	19.1	5	23.8	2	9.5	10	47.6	2	9.5	8	38.1	43	204.8	21
At Least One Grad. Deg.	25	48.1	18	34.6	9	17.3	16	30.8	13	25.0	4	7.7	7	13.5	12	23.1	28	53.9	132	254.0	52
Employment Outside Univ.																					
Never	12	30.0	7	17.5	6	15.0	14	35.0	10	25.0	5	12.5	6	15.0	6	15.0	21	52.5	87	217.5	40
One to Three Years	33	47.1	15	21.4	12	17.1	25	35.7	23	32.9	7	10.0	16	22.9	10	14.3	31	44.3	172	245.7	70
Four to Ten Years	27	44.3	14	23.0	18	29.5	27	44.3	16	26.2	6	9.8	11	18.0	5	8.2	21	34.4	145	237.7	61
Eleven Years or More	9	42.9	--	.0	4	19.1	9	42.9	7	33.3	2	9.5	3	14.3	3	14.3	8	38.1	45	214.4	21

Please refer to original questionnaire for significance of mean.

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+Many faculty members made multiple responses to this question. Because of this the percentage refers to the percent of those responding to the question not a given response. This is the reason that the total percentage is greater than 100.0. Note that the total percentage can be interpreted as the mean of the number of responses made by each faculty member. For example in total sample the average person made 2.32 written responses.
N refers to the number of times item was mentioned in written comment.
The mean refers to the mean of the distribution.

TABLE 3
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
TENURE SURVEY QUESTION (#8):
"HOW MANY OF THESE FACULTY MEMBERS WHO, IN YOUR OPINION,
SHOULD BE DISMISSED, WILL BE ON YOUR DEPARTMENTAL FACULTY NEXT YEAR?"

SUB GROUP	None		(1)		(2)		(3+)		Total		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	27	14.1	74	38.5	51	26.6	40	20.8	192	100.0	1.72
Rank											
Professor	13	17.8	24	32.9	22	30.1	14	19.2	73	100.0	1.55
Associate Professor	6	14.6	18	43.9	9	22.0	8	19.5	41	100.0	1.90
Assistant Professor	8	13.1	24	39.3	15	24.6	14	23.0	61	100.0	1.79
Instructor	--	0.0	6	40.0	5	33.3	4	26.7	15	100.0	1.93
Other Faculty	--	0.0	1	100.0	--	0.0	--	0.0	1	100.0	1.00
Chairman Status											
Chairman	4	26.7	6	40.0	3	20.0	2	13.3	15	100.0	1.20
Not Chairman	23	13.1	67	38.3	47	26.9	38	21.7	175	100.0	1.77
Tenure Status											
Tenured	17	16.3	42	40.4	29	27.9	16	15.4	104	100.0	1.53
Not Tenured	10	11.4	32	36.3	22	25.0	24	27.3	88	100.0	1.96
Utah Degrees											
None	16	13.1	49	40.2	34	27.9	23	18.8	122	100.0	1.75
Undergrad. Only	3	15.0	7	35.0	6	30.0	4	20.0	20	100.0	1.55
At Least 1 Gr. Degree.	8	16.0	18	36.0	11	22.0	13	26.0	50	100.0	1.72
Employment Outside Univ.											
Never	6	16.2	16	43.2	10	27.0	5	13.5	37	100.0	1.73
3 Years or More	9	13.6	26	39.4	17	25.8	14	21.2	66	100.0	1.71
4 - 10 Years	8	14.3	17	30.4	15	26.8	16	28.5	56	100.0	1.86
11+ Years	3	15.8	9	47.4	4	21.0	3	15.8	19	100.0	1.47

Please refer to original questionnaire for significance of mean.

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TABLE 3A
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#8A):
 "OF THOSE FACULTY WHOM YOU THINK SHOULD BE DISMISSED
 WHAT PERCENTAGE WILL STILL BE ON YOUR DEPARTMENTAL FACULTY NEXT YEAR?"

SUB-GROUP	0 %		10-90%		100 %		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	
Total Sample	29	14.8	22	11.2	145	73.8	196	100.0	8.04
Rank									
Professor	14	18.7	9	12.0	52	69.3	75	100.0	7.59
Associate Professor	6	14.3	7	16.7	29	69.0	42	100.0	7.93
Assistant Professor	8	13.1	4	6.6	49	80.3	61	100.0	8.39
Instructor	--	--	2	12.5	14	87.5	16	100.0	9.50
Other Faculty	1	100.0	--	--	--	--	1	100.0	0.00
Chairman Status									
Chairman	5	31.2	2	12.5	9	56.3	16	100.0	6.25
Not Chairman	24	13.5	20	11.2	134	75.3	178	100.0	8.18
Tenure Status									
Tenured	16	15.4	15	14.4	73	70.2	104	100.0	7.83
Not Tenured	13	14.1	7	7.6	72	78.3	92	100.0	8.28
Utah Degrees									
None	18	14.4	16	12.8	91	72.8	125	100.0	8.01
Undergraduate Only	3	15.0	2	10.0	15	75.0	20	100.0	8.00
At Least One Graduate Degree	8	15.7	4	7.9	39	76.5	51	100.0	8.14
Employment Outside University									
Never	7	18.4	5	13.2	26	68.4	38	100.0	7.53
One to Three Years	8	12.1	9	13.6	49	74.3	66	100.0	8.23
Four to Ten Years	9	15.5	5	8.5	44	75.9	58	100.0	8.14
Eleven Years or More	4	20.0	3	15.0	13	65.0	20	100.0	7.25

Please refer to original Questionnaire for significance of mean

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TABLE 4
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (# 9):
 "OF THOSE FACULTY WHOM YOU THINK SHOULD BE DISMISSED WHAT ARE
 THE REASONS YOU THINK THEY WILL BE ON YOUR FACULTY NEXT YEAR?"

SUB-GROUP	TENURE		OTHER		TOTAL		MEAN
	No.	%	No.	%	No.	%	
Total Sample	92	52.3	84	47.7	176	100.0	2.38
Rank							
Professor	34	50.0	34	50.0	68	100.0	2.50
Associate Professor	21	56.8	16	43.2	37	100.0	2.05
Assistant Professor	28	53.8	24	46.2	52	100.0	2.29
Instructor	8	47.1	9	52.9	17	100.0	2.82
Other Faculty	--	--	1	100.0	1	100.0	5.00
Chairman Status							
Chairman	9	64.3	5	35.7	14	100.0	2.07
Not Chairman	82	51.3	78	48.7	160	100.0	2.40
Tenure Status							
Tenured	46	48.9	48	51.1	94	100.0	2.50
Not Tenured	46	56.1	36	43.9	82	100.0	2.24
Utah Degrees							
None	57	50.4	56	49.6	113	100.0	2.45
Undergraduate Only	8	44.4	10	55.6	18	100.0	2.28
At Least One Graduate Degree	27	61.4	17	38.6	44	100.0	2.18
Employment Outside University							
Never	16	47.1	18	52.9	34	100.0	2.65
One to Three Years	32	52.5	29	47.5	61	100.0	2.38
Four to Ten Years	28	56.0	22	44.0	50	100.0	2.16
Eleven Years or More	11	57.9	8	42.1	19	100.0	2.10

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TABLE 5
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#10):
 "OF THOSE FACULTY WHOM YOU THINK SHOULD BE
 DISMISSED WHAT NUMBER WILL BE RETAINED BECAUSE OF TENURE?"

SUB-GROUP	NONE		(1)		2 OR MORE		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	
Total Sample	71	39.4	63	35.0	46	25.6	180	100.0	1.02
Rank									
Professor	31	43.0	25	34.7	16	22.2	72	100.0	0.86
Associate Professor	15	39.4	15	39.4	8	21.1	38	100.0	1.05
Assistant Professor	22	40.0	15	27.2	18	32.7	55	100.0	1.14
Instructor	3	21.4	7	50.0	4	28.6	14	100.0	1.28
Other Faculty	--	--	--	--	--	--	--	--	--
Chairman Status									
Chairman	2	12.5	8	50.0	6	37.5	16	100.0	1.31
Not Chairman	69	42.6	54	33.3	39	24.0	162	100.0	0.99
Tenure Status									
Tenured	42	43.2	36	37.1	19	19.6	97	100.0	0.87
Not Tenured	28	34.1	27	32.9	27	32.9	82	100.0	1.22
Utah Degrees									
None	47	40.8	37	32.3	31	27.0	115	100.0	1.01
Undergraduate Only	6	33.3	7	38.8	5	27.8	18	100.0	1.00
At Least One Graduate Degree	17	36.9	19	41.3	10	21.8	46	100.0	1.09
Employment Outside University									
Never	17	47.2	11	30.6	8	22.2	36	100.0	0.92
One to Three Years	25	40.3	22	35.4	15	24.2	62	100.0	0.98
Four to Ten Years	20	38.4	17	32.7	15	28.8	52	100.0	1.15
Eleven Years or More	6	33.3	7	38.8	5	27.8	18	100.0	1.00

Please refer to original Questionnaire for significance of mean

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TABLE 5A
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#10A):
 "OF THOSE FACULTY WHOM YOU THINK SHOULD BE
 DISMISSED WHAT PERCENTAGE WILL BE RETAINED BECAUSE OF TENURE?"

SUB-GROUP	0 %		10-80%		100 %		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	
Total Sample	75	40.5	39	21.1	71	38.4	185	100.0	4.91
Rank									
Professor	31	43.1	14	19.4	27	37.5	72	100.0	4.67
Associate Professor	15	38.5	9	23.0	15	38.5	39	100.0	5.05
Assistant Professor	25	43.9	12	21.1	20	35.0	57	100.0	4.75
Instructor	3	20.0	4	26.7	8	53.3	15	100.0	6.27
Other Faculty	1	100.0	--	--	--	--	1	100.0	0.00
Chairman Status									
Chairman	4	23.5	2	11.8	11	64.7	17	100.0	7.18
Not Chairman	71	42.8	37	22.3	58	34.9	166	100.0	4.61
Tenure Status									
Tenured	45	45.5	19	19.2	35	35.3	99	100.0	4.46
Not Tenured	30	34.9	20	23.3	36	41.8	86	100.0	5.42
Utah Degrees									
None	49	41.5	25	21.2	44	37.3	118	100.0	4.81
Undergraduate Only	6	33.3	5	27.8	7	38.9	18	100.0	5.50
At Least One Graduate Degree	19	39.5	9	18.8	20	41.7	48	100.0	5.02
Employment Outside University									
Never	18	48.6	5	13.5	14	37.8	37	100.0	4.32
One to Three Years	26	41.3	11	17.4	26	41.3	63	100.0	4.92
Four to Ten Years	21	38.9	13	24.1	20	37.0	54	100.0	5.06
Eleven Years or More	6	33.3	6	33.3	6	33.3	18	100.0	5.28

Please refer to original Questionnaire for significance of mean

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TABLE 6

THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
TENURE SURVEY QUESTION (#11):
"OF THOSE FACULTY WHOM YOU THINK SHOULD BE DISMISSED
HOW WILLING IS THE DEPARTMENT TO ATTEMPT
TO SEEK THEIR DISMISSAL?"

SUB-GROUP	NONWILLING		RELUCTANT		WILLING		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	
Total Sample	61	30.0	73	36.0	69	34.0	203	100.0	2.22
Rank									
Professor	14	17.7	30	38.0	35	44.3	79	100.0	2.46
Associate Professor	14	31.1	16	35.6	15	33.3	45	100.0	2.29
Assistant Professor	23	39.7	19	32.8	16	27.5	58	100.0	2.00
Instructor	9	47.4	7	36.8	3	15.8	19	100.0	1.79
Other Faculty	1	100.0	--	--	--	--	1	100.0	1.00
Chairman Status									
Chairman	3	16.7	9	50.0	6	33.3	18	100.0	2.33
Not Chairman	57	31.1	64	35.0	62	33.9	183	100.0	2.20
Tenure Status									
Tenured	26	24.0	41	38.0	41	38.0	108	100.0	2.33
Not Tenured	35	37.2	31	33.0	28	29.8	94	100.0	2.08
Utah Degrees									
None	36	27.3	46	34.8	50	37.9	132	100.0	2.30
Undergraduate Only	7	38.9	6	33.3	5	27.8	18	100.0	2.00
At Least One Graduate Degree	17	33.3	21	41.2	13	25.5	51	100.0	2.10
Employment Outside University									
Never	9	23.7	14	36.8	15	39.5	38	100.0	2.40
One to Three Years	26	36.7	17	23.9	28	39.4	71	100.0	2.22
Four to Ten Years	13	21.7	28	46.7	19	31.6	60	100.0	2.27
Eleven Years or More	9	42.8	6	28.6	6	28.6	21	100.0	1.95

Please refer to original questionnaire for significance of mean.

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TABLE 7
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971
RESPONSE TO THE FACULTY TENURE SURVEY QUESTION (#12):
"IF NONE OF YOUR FELLOW DEPARTMENTAL FACULTY MEMBERS SHOULD BE DISMISSED IN YOUR OPINION, WHAT
WOULD YOU CONSIDER ADEQUATE GROUNDS FOR A FACULTY MEMBER IN YOUR DEPARTMENT TO BE DISMISSED?"

Sub-Group	Poor Teaching		Poor Student Relations		Poor Departmental Relations		Poor Scholarship		Incompetence		Does Not Keep Up to Date		Does Not Meet Commitment to Univ.		Bad Conduct		Other		Total	MEAN GRADE	Total Responses		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%					
Total Sample	190	38.8	68	13.9	45	9.2	107	21.8	194	39.6	28	5.7	162	33.1	153	31.2	150	30.6	1097	223.9	5.23	490	
Faculty	Professor	56	33.5	20	12.0	12	7.2	36	21.6	80	47.9	7	4.2	65	38.9	65	38.9	69	41.3	410	245.5	5.64	167
	Associate Professor	45	36.5	14	11.4	13	10.6	30	24.4	46	37.4	10	8.1	47	38.2	37	30.1	29	23.6	271	220.4	5.20	123
	Assistant Professor	71	46.1	25	16.2	17	11.0	35	22.7	56	36.4	7	4.5	35	22.7	36	23.4	37	24.0	319	207.1	4.70	154
	Instructor	17	42.5	8	20.0	2	5.0	5	12.5	9	22.5	3	7.5	13	32.5	12	30.0	15	37.5	84	210.0	5.23	40
	Other Faculty	--	0.0	1	33.3	--	0.0	1	33.3	2	66.7	1	33.3	--	0.0	1	33.3	--	0.0	6	200.0	5.00	3
Chairman Status	Chairman	19	37.3	2	3.9	6	11.8	11	21.6	20	39.2	1	1.9	18	35.3	19	37.3	18	35.3	114	223.6	5.54	51
	Not Chairman	169	38.9	65	15.0	39	9.0	96	22.1	173	39.9	27	6.2	142	32.7	132	30.4	130	30.0	873	224.2	5.19	434
Tenure Status	Not Tenured	83	33.3	27	10.8	22	8.8	54	21.7	107	43.0	13	5.2	90	36.2	92	37.0	85	34.1	573	230.1	5.52	249
	Tenured	106	44.7	41	17.3	23	9.7	52	21.9	85	35.9	15	6.3	70	29.5	58	24.5	64	27.0	514	216.8	4.88	237
Degree Status	Not Degrees	127	42.2	41	13.6	23	7.6	76	25.3	116	38.5	16	5.3	92	30.6	84	27.9	103	34.2	678	225.2	5.16	301
	Degrees	14	35.0	5	12.5	5	12.5	4	10.0	18	45.0	5	12.5	14	35.0	14	35.0	8	20.0	87	217.5	5.25	40
	Undergraduate Only	48	33.6	21	14.7	17	11.9	26	18.2	57	39.9	7	4.9	53	37.1	52	36.4	36	25.2	317	221.9	5.31	143
Department Outside Univ.	Not	55	45.1	22	18.0	14	11.5	23	18.9	46	37.7	6	4.9	34	27.9	40	32.8	36	29.5	276	226.3	5.00	122
	One to Three Years	65	44.8	17	11.7	15	10.4	37	25.5	56	38.6	6	4.1	40	27.6	42	29.0	39	26.9	317	218.6	4.97	143
	Four to Ten Years	43	32.8	16	12.2	8	6.1	30	22.9	58	44.3	10	7.6	52	39.7	41	31.3	43	32.8	301	229.7	5.48	131
	Eleven Years or More	15	26.8	8	14.3	5	8.9	11	19.6	23	41.1	3	5.4	22	39.3	16	28.6	21	37.5	124	221.5	5.60	56

Please refer to original questionnaire for significance of mean.

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Many faculty members made multiple responses to this question. Because of this, the percentage refers to the percent of those responding to the question making a given response. This is the reason that the total percentage is greater than 100.0. Note that the total percentage can be interpreted as the mean of the number of responses made by each faculty member. For example, the average person made 2.32 written responses. This refers to the number of times item was mentioned in written comment.

... mean refers to the mean of this distribution.

TABLE 8
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#13A):
 "HOW MANY FACULTY MEMBERS IN YOUR DEPARTMENT HAVE BEEN
 CRITICIZED OR ATTACKED IN SOME WAY BY GROUPS
OUTSIDE THE UNIVERSITY?"

SUB GROUP	None		(1)		(2)		(3+)		Total		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	15	9.2	65	40.1	41	25.3	41	25.3	162	100.0	1.90
Rank											
Professor	6	10.3	15	25.9	17	29.3	20	34.5	58	100.0	2.10
Associate Professor	2	4.7	16	37.2	12	27.9	13	30.2	43	100.0	2.26
Assistant Professor	6	11.3	31	58.5	9	17.0	7	13.2	53	100.0	1.45
Instructor	1	14.2	3	42.9	2	28.7	1	14.2	7	100.0	1.43
Other Faculty	--	0.0	--	0.0	1	100.0	--	0.0	1	100.0	2.00
Chairman Status											
Chairman	1	7.1	6	42.9	4	28.6	3	21.4	14	100.0	1.71
Not Chairman	14	9.7	58	40.0	36	24.8	37	25.5	145	100.0	1.92
Tenure Status											
Tenured	8	9.6	23	27.8	26	31.3	26	31.3	83	100.0	2.10
Not Tenured	7	8.8	42	53.2	15	19.0	15	19.0	79	100.0	1.70
Utah Degrees											
None	8	8.0	47	46.5	24	23.7	22	21.8	101	100.0	1.88
Undergrad. Only	1	9.1	3	27.3	2	18.2	5	45.4	11	100.0	2.27
At Least 1 Gr. Degr.	6	12.5	15	31.2	13	27.1	14	29.2	48	100.0	1.85
Employment Outside U.											
Never	5	13.5	16	43.2	8	21.6	8	21.6	37	100.0	1.86
3 Years or Less	3	6.2	22	45.8	10	20.8	13	27.1	48	100.0	1.90
4 - 10 Years	2	4.2	20	41.7	16	33.3	10	20.8	48	100.0	1.98
11+ Years	3	15.0	5	25.0	5	25.0	7	35.0	20	100.0	1.85

Please refer to original questionnaire for significance of mean.

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TABLE 8A
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#13B):
 "OF THOSE FACULTY WHO HAVE BEEN CRITICIZED BY GROUPS OUTSIDE
 THE UNIVERSITY, HOW MANY ARE PROTECTED BY TENURE?"

SUB-GROUP	None		(1)		2-6		Total		MEAN
	No.	%	No.	%	No.	%	No.	%	
Total Sample	49	33.8	43	29.6	53	36.6	145	100.0	1.21
Rank									
Professor	12	23.1	14	26.9	26	50.0	52	100.0	1.56
Associate Professor	14	33.3	13	31.0	15	35.7	42	100.0	1.21
Assistant Professor	22	50.0	13	29.5	9	20.4	44	100.0	0.77
Instructor	1	16.7	3	50.0	2	33.3	6	100.0	1.33
Other Faculty	--	00.0	--	00.0	1	100.0	1	100.0	2.00
Chairman Status									
Chairman	8	57.1	2	14.3	4	28.6	14	100.0	0.79
Not Chairman	40	31.2	41	32.0	47	36.7	128	100.0	1.25
Tenure Status									
Tenured	20	26.0	21	27.3	36	46.7	77	100.0	1.47
Not Tenured	29	42.6	22	32.4	17	25.0	68	100.0	0.93
Utah Degrees									
None	34	36.6	27	29.0	32	34.4	93	100.0	1.13
Undergrad Only	3	42.8	1	14.3	3	42.8	7	100.0	1.29
At Least One Graduate Degree	12	27.9	14	32.6	17	39.5	43	100.0	1.37
Employment Outside University									
Never	8	26.7	13	43.3	9	30.0	30	100.0	1.30
One to Three Years	19	45.2	9	21.4	14	33.3	42	100.0	1.10
Four to Ten Years	14	31.1	13	28.9	18	40.0	45	100.0	1.20
Eleven Years or More	5	25.0	5	25.0	10	50.0	20	100.0	1.50

Please refer to original questionnaire for significance of mean.

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TABLE 8B
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#13C):
 "OF THOSE FACULTY WHO HAVE BEEN CRITICIZED BY GROUPS OUTSIDE
 THE UNIVERSITY WHAT PERCENTAGE ARE PROTECTED BY TENURE?"

SUB-GROUP	0%		10-80%		100%		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	
Total Sample	58	37.9	31	20.3	64	41.8	153	100.0	5.24
Rank									
Professor	15	26.3	15	26.3	27	47.4	57	100.0	6.18
Associate Professor	16	38.1	10	23.8	16	38.1	42	100.0	4.95
Assistant Professor	26	55.3	5	10.6	16	34.0	47	100.0	3.96
Instructor	1	16.7	1	16.7	4	66.6	6	100.0	7.50
Other Faculty	--	0.0	--	0.0	1	100.0	1	100.0	10.00
Chairman Status									
Chairman	8	57.1	2	14.3	4	28.6	14	100.0	3.79
Not Chairman	49	36.0	29	21.3	58	42.6	136	100.0	5.36
Tenure Status									
Tenured	24	30.0	19	23.8	37	46.2	80	100.0	5.88
Not Tenured	34	46.6	12	16.4	27	37.0	73	100.0	4.55
Utah Degrees									
None	39	39.8	18	18.4	41	41.8	98	100.0	5.11
Undergrad Only	5	55.6	1	11.1	3	33.3	9	100.0	3.89
At Least One Graduate Degree	14	31.8	11	25.0	19	43.2	44	100.0	5.70
Employment Outside University									
Never	11	34.3	6	18.8	15	46.9	32	100.0	5.50
One to Three Years	21	48.8	6	14.0	16	37.2	43	100.0	4.60
Four to Ten Years	15	31.2	11	22.9	22	45.8	48	100.0	5.73
Eleven Years or More	5	25.0	5	25.0	10	50.0	20	100.0	6.60

Please refer to original questionnaire for significance of mean.

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TABLE 9

THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
TENURE SURVEY QUESTION (#13D):
"HOW MANY FACULTY MEMBERS IN YOUR DEPARTMENT HAVE BEEN
CRITICIZED OR ATTACKED IN SOME WAY BY GROUPS
INSIDE THE UNIVERSITY?"

SUB GROUP	None		(1)		(2)		(3+)		Total		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	12	5.6	74	34.6	57	26.6	71	33.2	214	100.0	2.18
Rank											
Professor	4	5.6	27	37.5	26	36.1	15	20.8	72	100.0	1.78
Associate Professor	2	3.8	19	36.5	11	21.2	20	38.5	52	100.0	2.69
Assistant Professor	5	7.1	24	34.3	15	21.4	26	37.1	70	100.0	2.16
Instructor	1	5.3	4	21.0	5	26.3	9	47.4	19	100.0	2.37
Other Faculty	--	0.0	--	0.0	--	0.0	1	100.0	1	100.0	3.00
Chairman Status											
Chairman	1	5.6	10	55.6	3	16.6	4	22.2	18	100.0	1.94
Not Chairman	1	5.7	63	32.5	53	27.3	67	34.5	194	100.0	2.21
Tenure Status											
Tenured	6	5.9	36	35.6	31	30.7	28	27.7	101	100.0	2.07
Not Tenured	6	5.3	38	33.6	26	23.0	43	38.0	113	100.0	2.28
Utah Degrees											
None	7	5.3	45	34.1	30	22.7	50	37.9	132	100.0	2.28
Undergrad. Only	1	5.3	8	42.1	7	36.8	3	15.8	19	100.0	1.68
At Least 1 Gr. Degr.	4	6.6	21	34.4	18	29.5	18	29.5	61	100.0	2.13
Employment Outside Univ.											
Never	4	7.1	18	32.1	17	30.4	17	30.4	56	100.0	2.27
3 Years or More	2	3.2	27	43.5	9	14.5	24	38.7	62	100.0	2.18
4 - 10 Years	2	3.2	17	27.0	22	34.9	22	34.9	63	100.0	2.32
11+ Years	2	9.1	7	31.8	9	40.9	4	18.2	22	100.0	1.86

Please refer to original questionnaire for significance of mean.

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TABLE 9A
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#13E):
 "OF THOSE FACULTY WHO HAVE BEEN CRITICIZED BY GROUPS INSIDE
 THE UNIVERSITY, HOW MANY ARE PROTECTED BY TENURE?"

SUB-GROUP	None		(1)		(2-6)		Total		MEAN
	No.	%	No.	%	No.	%	No.	%	
Total Sample	53	26.8	76	38.4	69	34.8	198	100.0	1.33
Rank									
Professor	20	29.4	29	42.6	19	27.9	68	100.0	1.03
Associate Professor	12	24.5	19	38.8	18	36.7	49	100.0	1.59
Assistant Professor	17	27.4	20	32.2	25	40.3	62	100.0	1.42
Instructor	4	22.2	8	44.4	6	33.3	18	100.0	1.39
Other Faculty	--	0.0	--	0.0	1	100.0	1	100.0	3.00
Chairman Status									
Chairman	7	41.2	5	29.4	5	29.4	17	100.0	1.00
Not Chairman	45	25.1	71	39.7	63	35.2	179	100.0	1.37
Tenure Status									
Tenured	26	27.6	35	37.2	33	35.1	94	100.0	1.28
Not Tenured	27	26.0	41	39.4	36	34.6	104	100.0	1.38
Utah Degrees									
None	35	28.2	44	35.5	45	36.3	124	100.0	1.32
Undergraduate Only	6	35.3	4	23.5	7	21.2	17	100.0	1.18
At Least 1 Grad. Degree	12	21.8	26	47.3	17	30.9	55	100.0	1.44
Employment Outside Univ.									
Never	10	20.0	19	38.0	21	42.0	50	100.0	1.64
One to Three Years	18	32.1	23	41.1	15	26.8	56	100.0	1.14
Four to Ten Years	18	30.5	18	30.5	23	39.0	59	100.0	1.30
Eleven Years or More	6	28.6	9	42.8	6	28.6	21	100.0	1.10

Please refer to original questionnaire for significance of mean.

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TABLE 10
 THE DISTRIBUTION, BY SUB-GROUP OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#13G):
 "HOW MANY FACULTY MEMBERS IN YOUR DEPARTMENT HAVE BEEN
 CRITICIZED OR ATTACKED IN SOME WAY BY GROUPS
 INSIDE AND OUTSIDE THE UNIVERSITY?"

SUB GROUP	None		(1)		(2)		(3-9)		Total		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	14	10.9	49	38.0	39	30.2	27	20.9	129	100.0	1.88
Rank											
Professor	5	10.4	18	37.5	16	33.3	9	18.8	48	100.0	1.83
Associate Professor	2	6.5	12	38.7	10	32.3	7	22.6	31	100.0	2.29
Assistant Professor	6	15.8	15	39.5	9	23.7	8	21.1	38	100.0	1.63
Instructor	1	9.1	3	27.3	4	36.4	3	27.3	11	100.0	1.82
Other Faculty	--	0.0	1	100.0	--	0.0	--	0.0	1	100.0	1.00
Chairman Status											
Chairman	1	7.1	6	42.9	3	21.4	4	28.6	14	100.0	1.78
Not Chairman	13	11.5	43	38.1	35	31.0	22	19.5	113	100.0	1.88
Tenure Status											
Tenured	6	9.5	24	38.1	23	36.5	10	15.9	63	100.0	1.81
Not Tenured	8	12.1	25	37.9	16	24.2	17	25.8	66	100.0	1.94
Utah Degrees											
None	9	13.8	27	41.5	16	24.6	13	20.0	65	100.0	1.91
Undergrad. Only	1	7.7	5	38.5	5	38.5	2	15.4	13	100.0	1.77
At Least 1 Gr. Degr.	4	8.2	17	34.7	16	32.7	12	24.5	49	100.0	1.86
Employment Outside U.											
Never	4	10.3	16	41.0	11	28.2	8	20.5	39	100.0	1.85
3 Years or Less	4	12.1	12	36.4	12	36.4	5	15.2	33	100.0	1.67
4 - 10 Years	2	5.9	13	38.2	11	32.4	8	23.5	34	100.0	2.26
11+ Years	2	13.3	5	33.3	5	33.3	3	20.0	15	100.0	1.67

Please refer to original questionnaire for significance of mean.

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TABLE 9B
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#13F):
 "OF THOSE FACULTY WHO HAVE BEEN CRITICIZED BY GROUPS INSIDE
 THE UNIVERSITY WHAT PERCENTAGE ARE PROTECTED BY TENURE?"

SUB-GROUP	0%		10-80%		100%		Total		MEAN
	No.	%	No.	%	No.	%	No.	%	
Total Sample	67	31.6	62	29.2	83	39.2	212	100.0	5.46
Rank									
Professor	22	30.6	23	31.9	27	37.5	72	100.0	5.42
Associate Professor	16	30.8	14	26.9	22	42.3	52	100.0	5.40
Assistant Professor	24	34.8	18	26.1	27	39.1	69	100.0	5.51
Instructor	5	27.8	7	38.9	6	33.3	18	100.0	5.33
Other Faculty	--	0.0	--	0.0	1	100.0	1	100.0	10.00
Chairman Status									
Chairman	8	44.4	4	22.2	6	33.3	18	100.0	4.33
Not Chairman	58	30.2	58	30.2	76	39.6	192	100.0	5.57
Tenure Status									
Tenured	32	32.0	29	29.0	39	39.0	100	100.0	5.39
Not Tenured	35	31.2	33	29.5	44	39.3	112	200.0	5.52
Utah Degrees									
None	44	32.8	38	28.4	52	38.8	134	100.0	5.38
Undergraduate Only	8	42.1	2	10.5	9	47.4	19	100.0	5.37
At Least 1 Grad. Degree	15	26.3	20	35.1	22	38.6	57	100.0	5.68
Employment Outside Univ.									
Never	13	24.5	16	30.2	24	45.3	53	100.0	6.24
One to Three Years	23	37.7	15	24.6	23	37.7	61	100.0	4.77
Four to Ten Years	21	32.8	21	32.8	22	34.4	64	100.0	5.33
Eleven Years or More	7	31.8	7	31.8	8	36.4	22	100.0	5.27

Please refer to original questionnaire for significance of mean.

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TABLE 10A
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#13H):
 "OF THOSE FACULTY WHO HAVE BEEN CRITICIZED BY GROUPS INSIDE
 AND OUTSIDE THE UNIVERSITY, HOW MANY ARE PROTECTED BY TENURE?"

SUB-GROUP	NONE		(1)		(2-6)		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	
Total Sample	37	31.4	42	35.6	39	33.1	118	100.0	1.25
Rank									
Professor	13	28.9	15	33.3	17	37.8	45	100.0	1.36
Associate Professor	11	36.7	10	33.3	9	30.0	30	100.0	1.17
Assistant Professor	10	31.3	14	43.8	8	25.0	32	100.0	1.19
Instructor	2	20.0	3	30.0	5	50.0	10	100.0	1.40
Other Faculty	1	100.0	--	--	--	--	1	100.0	0.00
Chairman Status									
Chairman	7	46.7	2	13.3	6	40.0	15	100.0	1.07
Not Chairman	30	29.7	40	39.6	31	30.7	101	100.0	1.26
Tenure Status									
Tenured	19	32.2	18	30.5	22	37.3	59	100.0	1.30
Not Tenured	18	30.5	24	40.7	17	28.8	59	100.0	1.20
Utah Degrees									
None	21	35.0	21	35.0	18	30.0	60	100.0	1.23
Undergraduate Only	5	50.0	1	10.0	4	40.0	10	100.0	1.20
At Least One Graduate Degree	11	23.9	19	41.3	16	34.8	46	100.0	1.28
Employment Outside University									
Never	10	29.4	13	38.2	11	32.4	34	100.0	1.32
One to Three Years	9	31.0	10	34.5	10	34.5	29	100.0	1.10
Four to Ten Years	10	32.3	10	32.3	11	35.5	31	100.0	1.36
Eleven Years or More	5	33.3	5	33.3	5	33.3	15	100.0	1.13

Please refer to original Questionnaire for significance of mean

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TABLE 10B
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
TENURE SURVEY QUESTION (#131):
"OF THOSE FACULTY WHO HAVE BEEN CRITICIZED BY GROUPS INSIDE
AND OUTSIDE THE UNIVERSITY WHAT PERCENTAGE ARE PROTECTED BY TENURE?"

SUB-GROUP	0 %		10 - 80%		100%		Total		MEAN
	No.	%	No.	%	No.	%	No.	%	
Total Sample	43	33.6	33	25.8	52	40.6	128	100.0	5.39
Rank									
Professor	14	28.6	12	24.5	23	46.9	49	100.0	6.04
Associate Professor	12	37.5	10	31.3	10	31.3	32	100.0	4.62
Assistant Professor	14	38.9	9	25.0	13	36.1	36	100.0	4.83
Instructor	2	20.0	2	20.0	6	60.0	10	100.0	7.20
Other Faculty	1	100.0	--	00.0	--	00.0	1	100.0	0.00
Chairman Status									
Chairman	7	46.7	2	13.3	6	40.0	15	100.0	5.00
Not Chairman	36	32.4	31	27.9	44	39.6	111	100.0	5.36
Tenure Status									
Tenured	20	31.3	17	26.6	27	42.2	64	100.0	5.62
Not Tenured	23	35.9	16	25.0	25	39.1	64	100.0	5.16
Utah Degrees									
None	25	36.8	16	23.5	27	39.7	68	100.0	5.15
Undergrad Only	5	45.5	--	00.0	6	54.5	11	100.0	5.46
At Least One Graduate Degree	13	27.7	16	34.0	18	38.3	47	100.0	5.64
Employment Outside University									
Never	12	33.3	8	22.2	16	44.4	36	100.0	5.50
One to Three Years	11	34.4	6	18.6	15	46.9	32	100.0	5.69
Four to Ten Years	11	29.7	11	29.7	15	40.5	37	100.0	5.57
Eleven Years or More	5	33.3	5	33.3	5	33.3	15	100.0	5.33

Please refer to original questionnaire for significance of mean.

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TABLE 11
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
TENURE SURVEY QUESTION (#14):
"IF THE TENURE SYSTEM WERE COMPLETELY ABOLISHED,
HOW WOULD YOU FEEL ABOUT LEAVING THE UNIVERSITY?"

SUB GROUP	I Would Def. Leave		Probably Leave		No Effect on Action		Would Make me Stay		Total		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	43	7.1	140	23.1	383	63.1	41	6.8	607	100.0	2.70
Rank											
Professor	14	6.9	50	24.6	129	63.5	10	4.9	203	100.0	2.66
Associate Professor	15	10.1	43	29.1	83	56.1	7	4.7	148	100.0	2.55
Assistant Professor	11	5.7	45	23.2	116	59.8	22	11.3	194	100.0	2.77
Instructor	3	5.5	2	3.6	48	87.3	2	3.6	55	100.0	2.89
Other Faculty	--	0.0	--	0.0	3	100.0	--	0.0	3	100.0	3.00
Chairman Status											
Chairman	3	5.4	11	19.6	39	69.6	3	5.4	56	100.0	2.75
Not Chiarmen	39	7.2	126	23.1	343	62.9	37	6.8	545	100.0	2.69
Tenure Status											
Tenured	17	5.6	82	27.1	194	64.0	10	3.3	303	100.0	2.65
Not Tenured	26	8.7	58	19.4	184	61.5	31	10.4	299	100.0	2.74
Utah Degrees											
None	31	8.3	108	28.9	214	57.2	21	5.6	374	100.0	2.60
Undergrad. Only	3	5.7	6	11.3	42	79.2	2	3.8	53	100.0	2.81
At Least 1 Gr. Degr.	9	5.2	25	14.4	123	70.7	17	9.8	174	100.0	2.85
Employment Outside U.											
Never	5	3.3	23	15.3	113	75.3	9	6.0	150	100.0	2.84
3 Years or More	16	9.0	39	22.0	113	63.8	9	5.1	177	100.0	2.65
4 - 10 Years	13	7.7	55	32.7	84	50.0	16	9.5	168	100.0	2.61
11+ Years	6	9.0	16	23.9	42	62.7	3	4.5	67	100.0	2.63

Please refer to original questionnaire for significance of mean.

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TABLE 12
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971 RESPONSE TO THE FACULTY TENURE SURVEY (ATTACHMENT 15)
 "IF YOU INDICATED THAT YOU WOULD PROBABLY OR DEFINITELY LEAVE THE UNIVERSITY IF TENURE WERE TO BE ABOLISHED, WHY WOULD YOU DO SO?"

Sub-Group	Academic Freedom Would Vanish		Tenure Provides Job Security		Fear Non-Academic Attacks From Community		Fear Non-Academic Attacks From Univ. Community		Other		Total		MEAN ##	Total Respondents
	No. #	% +	No. #	% +	No. #	% +	No. #	% +	No. #	% +	No. #	% +		
Total Sample	112	56.8	28	14.2	49	24.9	34	17.3	64	32.4	287	145.7	3.15	197
Rank														
Professor	22	31.4	12	17.1	17	24.3	14	22.0	23	32.9	88	125.4	3.59	70
Associate Professor	19	32.2	5	8.5	15	25.4	11	18.7	21	35.6	71	120.4	3.76	59
Assistant Professor	23	38.3	10	16.7	14	23.3	8	13.3	17	28.3	72	120.0	3.39	60
Instructor	3	37.5	1	12.5	3	37.5	1	12.5	3	37.5	11	137.5	3.36	8
Other Faculty	0	00.0	0	00.0	0	00.0	0	00.0	0	00.0	0	000.0	0.00	0
Chairman Status														
Chairman	6	42.9	2	14.3	3	21.4	1	7.1	7	50.0	19	135.7	3.32	14
Not Chairman	59	33.0	25	14.0	44	24.6	32	17.9	55	30.7	215	120.1	3.56	179
Tenure Status														
Tenured	32	30.8	18	17.3	25	24.0	20	19.2	36	34.6	131	125.9	3.65	104
Not Tenured	35	37.6	10	10.8	24	25.8	14	15.0	28	30.1	111	119.3	3.42	93
Utah Degrees														
None	51	34.0	19	12.7	42	28.0	26	17.3	49	32.7	187	124.7	3.56	150
Undergraduate Only	5	50.0	2	20.0	2	20.0	1	10.0	3	30.0	13	130.0	3.08	10
At Least 1 Grad. Degree	11	30.6	8	22.2	5	13.9	7	19.4	12	33.3	43	119.4	3.58	36
Employment Outside Univ.														
Never	12	35.3	6	17.7	6	17.7	3	8.8	14	41.2	41	120.7	3.44	34
One to Three Years	21	35.6	5	8.5	17	28.8	9	15.3	15	25.4	67	113.6	3.45	59
Four to Ten Years	22	31.4	9	12.9	17	24.3	20	28.6	21	30.0	89	127.2	3.72	70
Eleven Years or More	9	39.1	5	21.7	5	21.7	1	4.3	12	52.1	32	139.0	3.53	23

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Please refer to original questionnaire for significance of mean.

+ Many faculty members made multiple responses to this question. Because of this, the percentage refers to the percent of those responding to the question making a given response. This is the reason that the total percentage is greater than 100.0. Note that the total percentage can be interpreted as the mean of the number of responses made by each faculty member. For example, the average person made 1.46 written responses.

#N Refers to the number of times item was mentioned in written comment.

The mean refers to the mean of this distribution.

TABLE 13

THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971
 RESPONSE TO THE FACULTY TENURE SURVEY QUESTION (#16):
 "IF TENURE WERE ABOLISHED, HOW DO YOU THINK IT WOULD
 AFFECT RECRUITMENT OF NEW FACULTY?"

SUB-GROUP	HURT BADLY		HURT SOME		NO EFFECT		HELP		NO OPINION		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	288	46.2	232	37.2	68	10.9	21	3.4	14	2.2	623	100.0	1.81
Rank													
Professor	124	57.4	64	29.6	16	7.4	4	1.9	8	3.7	216	100.0	1.69
Associate Professor	80	53.0	53	35.1	13	8.6	3	2.0	2	1.3	151	100.0	1.66
Assistant Professor	70	35.9	85	43.6	28	14.4	10	5.1	2	1.0	195	100.0	1.94
Instructor	13	24.1	26	48.1	9	16.7	4	7.4	2	3.7	54	100.0	2.22
Other Faculty	--	--	1	33.3	2	66.7	--	--	--	--	3	100.0	2.67
Chairman Status													
Chairman	33	55.0	16	26.7	7	11.7	3	5.0	1	1.7	60	100.0	1.77
Not Chairman	251	45.1	216	38.8	59	10.6	18	3.2	13	2.3	557	100.0	1.82
Tenure Status													
Tenured	180	57.1	98	31.1	23	7.3	5	1.6	9	2.9	315	100.0	1.65
Not Tenured	108	35.4	132	43.3	44	14.4	16	5.2	5	1.6	305	100.0	1.97
Utah Degrees													
None	194	50.1	132	34.1	41	10.6	12	3.1	8	2.1	387	100.0	1.76
Undergraduate Only	20	39.2	24	47.1	4	7.8	1	2.0	2	3.9	51	100.0	1.88
At Least One Graduate Degree	70	39.3	75	42.1	23	12.9	7	3.9	3	1.7	178	100.0	1.89
Employment Outside University													
Never	53	34.6	71	46.4	20	13.1	5	3.3	4	2.6	153	100.0	1.95
One to Three Years	80	44.0	67	36.8	21	11.5	9	4.9	5	2.7	182	100.0	1.90
Four to Ten Years	98	56.3	54	31.0	16	9.2	3	1.7	3	1.7	174	100.0	1.64
Eleven Years or More	35	51.5	22	32.4	8	11.8	2	2.9	1	1.5	68	100.0	1.75

Please refer to original Questionnaire for significance of mean

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TABLE 14
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971
RESPONSE TO THE FACULTY TENURE SURVEY QUESTION (#17):
"IF TENURE WERE ABOLISHED, HOW DO YOU THINK IT WOULD AFFECT
THE RECEIPT OF FEDERAL OR FOUNDATION MONEY BY THE UNIVERSITY?"

SUB-GROUP	HURT BADLY		HURT SOME		NO EFFECT		HELP		NO OPINION		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	96	16.2	125	21.2	209	35.4	30	5.1	131	22.2	591	100.0	3.19
Rank													
Professor	40	19.0	55	26.1	66	31.3	8	3.8	42	19.9	211	100.0	3.00
Associate Professor	31	21.8	23	16.2	52	36.6	7	4.9	29	20.4	142	100.0	3.05
Assistant Professor	22	12.2	35	19.3	71	39.2	12	6.6	41	22.7	181	100.0	3.32
Instructor	3	5.9	12	23.5	17	33.3	3	5.9	16	31.4	51	100.0	3.65
Other Faculty	--	--	--	--	2	66.7	--	--	1	33.3	3	100.0	4.00
Chairman Status													
Chairman	7	12.5	13	23.2	21	37.5	3	5.4	12	2.4	56	100.0	3.23
Not Chairman	87	16.4	111	21.0	187	35.3	27	5.1	117	22.1	529	100.0	3.18
Tenure Status													
Tenured	65	21.7	73	24.4	89	30.0	10	3.3	62	20.7	299	100.0	2.98
Not Tenured	31	10.8	52	18.1	116	40.3	20	6.9	69	24.0	288	100.0	3.40
Utah Degrees													
None	63	17.5	72	20.0	129	35.8	13	3.6	83	23.1	360	100.0	3.18
Undergraduate Only	6	11.5	9	17.3	14	26.9	7	13.5	16	30.8	52	100.0	3.67
At Least One Graduate Degree	24	14.0	43	25.0	66	38.4	9	5.2	30	17.4	172	100.0	3.05
Employment Outside University													
Never	13	9.0	29	20.0	57	39.3	7	4.8	39	27.0	145	100.0	3.48
One to Three Years	28	16.5	39	22.9	57	33.5	9	5.3	37	21.8	170	100.0	3.15
Four to Ten Years	35	20.8	33	19.6	61	36.3	8	4.8	31	18.5	168	100.0	3.01
Eleven Years or More	11	16.7	15	22.7	22	33.3	4	6.1	14	21.2	66	100.0	3.14

Please refer to original Questionnaire for significance of mean

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TABLE 15
 DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971
 RESPONSE TO THE FACULTY TENURE SURVEY QUESTION (#18):
 "IF TENURE WERE ABOLISHED, HOW DO YOU THINK IT WOULD
 AFFECT THE STATUS OF THE UNIVERSITY WITHIN THE ACADEMIC COMMUNITY AS A WHOLE?"

SUB-GROUP	HURT BADLY		HURT SOME		NO EFFECT		HELP		NO OPINION		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	265	43.6	155	25.5	90	14.8	69	11.3	29	4.8	608	100.0	2.16
Rank													
Professor	106	49.5	62	29.0	24	11.2	13	6.1	9	4.2	214	100.0	1.92
Associate Professor	79	53.0	33	22.1	23	15.4	11	7.4	3	2.0	149	100.0	1.87
Assistant Professor	66	34.8	47	24.8	32	16.8	32	16.8	13	6.8	190	100.0	2.47
Instructor	13	26.5	12	24.5	11	22.4	9	18.4	4	8.2	49	100.0	2.71
Other Faculty	--	--	--	--	--	--	2	100.0	--	--	2	100.0	4.00
Chairman Status													
Chairman	25	41.7	16	26.6	8	13.3	7	11.7	4	6.7	60	100.0	2.27
Not Chairman	237	43.7	138	25.5	81	14.9	61	11.3	25	4.6	542	100.0	2.14
Tenure Status													
Tenured	164	52.7	79	25.4	35	11.3	23	7.4	10	3.2	311	100.0	1.87
Not Tenured	101	34.6	76	26.0	52	17.8	44	15.1	19	6.5	292	100.0	2.44
Utah Degrees													
None	175	46.8	84	22.5	57	15.2	39	10.4	19	5.1	374	100.0	2.12
Undergraduate Degree Only	19	37.3	18	35.3	6	11.8	5	9.8	3	5.9	51	100.0	2.20
At Least One Graduate Degree	68	38.4	52	29.4	27	15.3	24	13.6	6	3.4	177	100.0	2.21
Employment Outside University													
Never	54	37.0	43	29.5	22	15.1	18	12.3	9	6.2	146	100.0	2.32
One to Three Years	78	44.3	29	16.5	29	16.5	27	15.3	13	7.4	176	100.0	2.35
Four to Ten Years	82	47.1	47	27.0	26	14.9	14	8.0	5	2.9	174	100.0	1.97
Eleven Years or More	32	48.5	21	31.8	8	12.1	4	6.0	1	1.5	66	100.0	1.83

Please refer to original Questionnaire for significance of mean

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TABLE 16
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#19):
 "DOES TENURE PERFORM A PROTECTIVE ROLE IN YOUR OPINION?"

SUB-GROUP	YES		NO		TOTAL		MEAN
	No.	%	No.	%	No.	%	
Total Sample	564	91.0	56	9.0	620	100.0	1.09
Rank							
Professor	192	91.4	18	8.6	210	100.0	1.09
Associate Professor	142	92.2	12	7.8	154	100.0	1.08
Assistant Professor	175	89.7	20	10.3	195	100.0	1.10
Instructor	49	89.1	6	10.9	55	100.0	1.11
Other Faculty	2	100.0	--	--	2	100.0	1.00
Chairman Status							
Chairman	53	93.0	.4	7.0	57	100.0	1.07
Not Chairman	505	90.7	52	9.3	557	100.0	1.09
Tenure Status							
Tenured	284	91.6	26	8.4	310	100.0	1.08
Not Tenured	276	90.5	29	9.5	305	100.0	1.10
Utah Degrees							
None	353	91.2	34	8.8	387	100.0	1.09
Undergraduate Only	47	95.9	2	4.1	49	100.0	1.04
At Least One Graduate Degree	158	88.8	20	11.2	178	100.0	1.11
Employment Outside University							
Never	132	85.2	23	14.8	155	100.0	1.15
One to Three Years	174	95.6	8	4.4	182	100.0	1.04
Four to Ten Years	158	92.4	13	7.6	171	100.0	1.08
Eleven Years or More	59	86.8	9	13.2	68	100.0	1.13

Please refer to original Questionnaire for significance of mean

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TABLE 17
 RESPONSE TO THE FACULTY TENURE SURVEY QUESTION
 "DO YOU AGREE THAT TENURE PERFORMS A PROTECTIVE ROLE, FROM WHAT OR WHOM DOES IT PROVIDE PROTECTION?"

SUB-GROUP	Protects Academic Freedom		From Non-Academic Attacks From Community		From Non-Academic Attacks From University Community		Tenure Institutionalizes Incompetence		Other		Total		Total Respondents
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	103	18.6	263	47.6	240	43.4	95	17.2	135	24.4	836	151.2	553
Rank													
Professor	34	18.2	97	51.9	97	51.9	26	13.9	45	24.1	299	160.0	187
Associate Professor	20	14.5	72	52.2	65	47.1	17	12.3	29	21.0	203	147.1	138
Assistant Professor	32	18.3	73	41.7	65	37.1	38	21.7	37	21.1	245	139.9	175
Instructor	12	25.0	15	31.3	12	25.0	12	25.0	17	35.4	68	141.7	48
Other Faculty	--	0.0	1	50.0	--	0.0	1	50.0	1	50.0	3	150.0	2
Chairman Status													
Chairman	11	21.6	20	39.2	19	37.3	11	21.6	11	21.6	72	141.3	51
Not Chairman	90	18.1	241	48.6	217	43.8	83	16.7	124	25.0	755	152.3	496
Tenure Status													
Tenured	54	19.6	144	52.2	137	49.6	39	14.1	62	22.5	436	158.0	276
Not Tenured	49	17.9	117	42.9	102	37.4	55	20.1	71	26.0	394	144.2	273
Utah Degrees													
None	62	18.0	177	51.6	148	43.1	51	14.9	82	23.9	520	151.3	343
Undergraduate Only	9	18.8	19	39.6	19	39.6	9	18.8	11	22.9	67	139.7	48
At Least 1 Grad. Degree	32	20.5	62	39.7	69	44.2	35	22.4	41	26.3	239	153.1	156
Employment Outside Univ.													
Never	21	16.5	57	44.9	63	49.6	18	14.1	25	19.7	184	144.8	127
One to Three Years	23	13.4	83	48.2	65	37.8	42	24.4	39	22.7	252	146.5	172
Four to Ten Years	30	19.2	81	51.9	70	44.8	18	11.5	39	25.0	238	152.5	156
Eleven Years or More	8	13.8	26	44.8	27	46.5	8	13.8	17	29.3	86	148.2	58

Please refer to original questionnaire for significance of mean.
 any faculty members made multiple responses to this question. Because of this, the percentage refers to the percent of those responding to the question making a given response. This is the reason that the total percentage is greater than 100.0. Note that the total percentage can be interpreted as the mean of the number of responses made by each faculty member. For example, the average person made 1.51 written responses.
 refers to the number of times item was mentioned in written comment
 The mean refers to the mean of this distribution.

TABLE 18
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#21):
 "MIGHT THE PROTECTIVE ROLE OF TENURE
 BE PROVIDED IN SOME OTHER WAY?"

SUB-GROUP	YES		NO		TOTAL		MEAN
	No.	%	No.	%	No.	%	
Total Sample	246	51.2	234	48.8	480	100.0	1.49
Rank							
Professor	86	52.8	77	47.2	163	100.0	1.47
Associate Professor	46	36.2	81	63.8	127	100.0	1.64
Assistant Professor	93	60.4	61	39.6	154	100.0	1.40
Instructor	18	54.5	15	45.4	33	100.0	1.46
Other Faculty	2	100.0	--	--	2	100.0	1.00
Chairman Status							
Chairman	16	39.0	25	61.0	41	100.0	1.61
Not Chairman	227	52.2	208	47.8	435	100.0	1.48
Tenure Status							
Tenured	107	44.2	135	55.8	242	100.0	1.56
Not Tenured	137	58.5	97	41.4	234	100.0	1.42
Utah Degrees							
None	150	50.7	146	49.3	296	100.0	1.49
Undergraduate Only	23	60.5	15	39.5	38	100.0	1.40
At Least One Graduate Degree	70	49.3	72	50.7	142	100.0	1.51
Employment Outside University							
Never	58	50.4	57	49.6	115	100.0	1.50
One to Three Years	72	52.2	66	47.8	138	100.0	1.48
Four to Ten Years	73	51.4	69	48.6	142	100.0	1.49
Eleven Years or More	28	52.8	25	47.2	53	100.0	1.47

Please refer to original Questionnaire for significance of mean

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TABLE 19
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#22):
 "WHAT OTHER METHODS BESIDES TENURE ARE
 THERE OF PROVIDING PROTECTION?"

SUB-GROUP	OTHER SYSTEM		OTHER		TOTAL		MEAN
	No.	%	No.	%	No.	%	
Total Sample	87	30.3	200	69.7	287	100.0	5.55
Rank							
Professor	35	32.4	73	67.6	108	100.0	5.00
Associate Professor	20	33.3	40	66.7	60	100.0	5.52
Assistant Professor	25	27.2	67	72.8	92	100.0	6.21
Instructor	6	27.3	16	72.7	22	100.0	5.68
Other Faculty	--	--	2	100.0	2	100.0	8.00
Chairman Status							
Chairman	8	33.3	16	66.7	24	100.0	5.00
Not Chairman	78	30.0	182	70.0	260	100.0	5.60
Tenure Status							
Tenured	43	30.9	96	69.1	139	100.0	5.30
Not Tenured	43	29.7	102	70.3	145	100.0	5.77
Utah Degrees							
None	43	23.8	138	76.2	181	100.0	5.66
Undergraduate Only	11	40.8	16	59.2	27	100.0	5.18
At Least One Graduate Degree	33	44.0	42	56.0	75	100.0	5.52
Employment Outside University							
Never	19	29.2	46	70.8	65	100.0	5.77
One to Three Years	29	33.7	57	66.3	86	100.0	5.50
Four to Ten Years	24	27.6	63	72.4	87	100.0	5.51
Eleven Years or More	9	27.2	24	72.8	33	100.0	5.09

Please refer to original Questionnaire for significance of mean

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TABLE 20
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971
RESPONSE TO THE FACULTY TENURE SURVEY QUESTION (#23):
"DOES THE PRESENT SYSTEM OF GRANTING TENURE REQUIRE ALTERATION?"

SUB-GROUP	STR AGREE		AGREE		UNDECIDED		DISAGREE		STR DISG		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	94	15.4	185	30.3	178	29.2	105	17.2	48	7.9	610	100.0	2.72
Rank													
Professor	30	14.6	63	30.6	48	23.3	44	21.4	21	10.1	206	100.0	2.82
Associate Professor	19	12.5	38	25.0	37	24.3	40	26.3	18	11.8	152	100.0	3.00
Assistant Professor	35	18.0	65	33.5	67	34.5	19	9.8	8	4.1	194	100.0	2.58
Instructor	9	17.6	17	33.3	22	43.1	2	3.9	1	2.0	51	100.0	2.39
Other Faculty	1	33.3	1	33.3	1	33.4	--	--	--	--	3	100.0	2.00
Chairman Status													
Chairman	14	24.6	12	21.1	13	22.7	14	24.6	4	7.0	57	100.0	2.68
Not Chairman	78	14.3	171	31.3	165	30.2	91	16.6	42	7.6	547	100.0	2.72
Tenure Status													
Tenured	38	12.5	86	28.2	75	24.5	71	23.3	35	11.5	305	100.0	2.93
Not Tenured	55	18.3	98	32.6	102	33.9	33	10.9	13	4.3	301	100.0	2.50
Utah Degrees													
None	56	14.7	114	30.0	118	31.1	59	15.5	33	8.7	380	100.0	2.73
Undergraduate Only	7	13.7	14	27.5	17	33.3	12	23.5	1	2.0	51	100.0	27.2
At Least One Graduate Degree	30	17.4	53	30.8	42	24.4	33	19.2	14	8.1	172	100.0	2.70
Employment Outside University													
Never	24	15.7	42	27.5	54	35.4	23	15.0	10	6.6	153	100.0	2.69
One to Three Years	34	14.0	50	27.9	52	29.1	31	17.3	12	6.7	179	100.0	2.65
Four to Ten Years	23	14.0	59	36.0	39	23.8	27	16.5	16	9.8	164	100.0	2.72
Eleven Years or More	11	15.7	21	30.0	17	24.3	15	21.4	6	8.6	70	100.0	2.77

Please refer to original Questionnaire for significance of mean

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TABLE 21
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#24):
 "SHOULD TENURE BE EASIER TO OBTAIN
 AT THE UNIVERSITY THAN IT PRESENTLY IS?"

SUB GROUP	Agree		Undecided		Disagree		Str. Disagr		Total		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	46	7.8	127	21.4	244	41.2	175	29.6	592	100.0	3.90
Rank											
Professor	5	2.4	18	8.8	101	49.5	80	39.2	204	100.0	4.24
Associate Professor	11	7.3	20	13.3	61	40.7	58	38.7	150	100.0	4.09
Assistant Professor	23	12.5	63	34.2	68	37.0	30	16.3	184	100.0	3.54
Instructor	7	14.3	22	44.9	14	28.6	6	12.2	49	100.0	3.35
Other Faculty	--	0.0	2	100.0	--	0.0	--	0.0	2	100.0	3.00
Chairman Status											
Chairman	1	1.6	11	19.0	23	39.7	23	39.7	58	100.0	4.17
Not Chairman	45	8.5	115	21.8	218	41.3	150	28.4	528	100.0	3.87
Tenure Status											
Tenured	6	2.0	26	8.6	146	48.3	124	41.0	302	100.0	4.28
Not Tenured	39	13.6	101	35.2	97	33.8	50	17.4	287	100.0	3.52
Utah Degrees											
None	32	8.7	86	23.3	141	38.2	110	29.8	369	100.0	3.87
Undergrad. Only	4	8.2	11	22.4	23	46.9	11	22.4	49	100.0	3.82
At Least 1 Gr. Degr.	10	6.0	27	16.2	78	46.7	52	31.1	167	100.0	4.01
Employment Outside U.											
Never	13	8.9	38	26.0	57	39.0	38	26.0	146	100.0	3.80
3 Years or More	15	8.6	42	24.1	74	42.5	43	24.7	174	100.0	3.82
4 - 10 Years	12	7.5	30	18.8	57	35.6	61	38.1	160	100.0	4.02
11+ Years	2	2.9	7	10.1	34	49.3	26	37.7	69	100.0	4.20

Please refer to original questionnaire for significance of mean.

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TABLE 22
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971
RESPONSE TO THE FACULTY TENURE SURVEY QUESTION (#25):
"SHOULD TENURE BE MORE DIFFICULT TO
OBTAIN AT THE UNIVERSITY?"

SUB-GROUP	STR. AGREE		AGREE		UNDECIDED		DISAGREE		STR. DISG.		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	80	13.8	122	21.0	170	29.2	167	28.7	42	7.2	581	100.0	2.95
Rank													
Professor	36	18.1	64	32.2	37	18.6	55	27.6	7	3.5	199	100.0	2.66
Associate Professors	23	15.6	26	17.7	32	21.8	50	34.0	16	10.9	147	100.0	3.07
Assistant Professors	17	9.4	25	13.8	75	41.4	47	26.0	17	9.4	181	100.0	3.12
Instructor	4	8.3	7	14.6	22	45.8	13	27.1	2	4.2	48	100.0	3.04
Other Faculty	--	--	--	--	2	100.0	--	--	--	--	2	100.0	3.00
Chairman Status													
Chairman	12	21.4	13	23.2	14	25.0	15	26.8	2	3.6	56	100.0	2.68
Not Chairman	67	12.9	106	20.4	155	29.9	151	29.1	40	7.7	519	100.0	2.98
Tenure Status													
Tenured	50	16.9	91	30.7	54	18.2	84	28.4	17	5.7	296	100.0	2.75
Not Tenured	29	10.3	31	11.0	116	41.1	81	28.7	25	8.9	282	100.0	3.15
Utah Degrees													
None	47	13.0	74	20.4	119	32.9	93	25.7	29	8.0	362	100.0	2.95
Undergraduate Only	4	8.2	15	30.6	12	24.5	16	32.6	2	4.1	49	100.0	2.94
At Least One Graduate Degree	28	17.2	33	20.2	34	20.8	57	35.0	11	6.7	163	100.0	2.94
Employment Outside University													
Never	17	11.6	26	17.8	50	34.2	47	32.2	6	4.1	146	100.0	2.94
One to Three Years	21	12.4	32	18.8	55	32.4	46	27.0	16	9.4	170	100.0	3.02
Four to Ten Years	27	17.4	35	22.6	38	24.5	43	27.7	12	7.7	155	100.0	2.86
Eleven Years or More	13	19.1	19	27.9	13	19.1	18	26.5	5	7.4	68	100.0	2.75

Please refer to original Questionnaire for significance of mean

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TABLE 23
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971
RESPONSE TO THE FACULTY TENURE SURVEY QUESTION (#26):
"IS IT POSSIBLE TO PROTECT ACADEMIC FREEDOM
WITHOUT PROVIDING JOB SECURITY?"

SUB-GROUP	STR AGREE		AGREE		UNDECIDED		DISAGREE		STR DISAG		TOTAL		MEAN
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Total Sample	70	11.8	159	26.9	170	28.8	105	17.8	87	14.7	591	100.0	2.97
Rank													
Professor	22	11.3	42	21.5	60	30.8	39	20.0	32	16.4	195	100.0	3.09
Associate Professor	10	6.7	39	26.0	35	23.3	30	20.0	36	24.0	150	100.0	3.29
Assistant Professor	27	14.4	58	30.8	54	28.7	33	17.6	16	8.5	188	100.0	2.75
Instructor	10	19.6	18	35.3	17	33.3	3	5.9	3	5.9	51	100.0	2.43
Other Faculty	1	33.3	1	33.3	1	33.3	--	--	--	--	3	100.0	2.00
Chairman Status													
Chairman	8	14.8	12	22.2	16	29.6	13	24.0	5	9.3	54	100.0	2.91
Not Chairman	61	11.5	147	27.7	151	28.4	91	17.1	81	15.3	531	100.0	2.97
Tenure Status													
Tenured	26	8.9	59	20.3	96	33.0	59	20.3	51	7.5	291	100.0	3.17
Not Tenured	42	14.2	100	33.8	72	24.3	46	15.5	36	12.2	296	100.0	2.78
Utah Degrees													
None	41	14.2	85	23.3	106	29.0	68	18.6	65	17.8	365	100.0	3.08
Undergraduate Only	5	9.6	23	44.2	11	21.2	8	15.4	5	9.6	52	100.0	2.71
At Least One Graduate Degree	24	14.3	50	29.8	52	31.0	26	15.5	16	9.5	168	100.0	2.76
Employment Outside University													
Never	18	12.8	45	30.2	54	36.2	22	14.8	10	6.7	149	100.0	2.74
One to Three Years	18	10.3	52	29.9	48	27.6	32	18.4	24	13.8	174	100.0	2.95
Four to Ten Years	21	13.3	36	22.7	38	24.1	33	20.9	30	19.0	158	100.0	3.10
Eleven Years or More	8	11.9	15	22.4	19	28.4	11	16.4	14	20.9	67	100.0	3.12

Please refer to original Questionnaire for significance of mean

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TABLE 24
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
TENURE SURVEY QUESTION (#27):
"IS THERE DISCONTENT WITH THE TENURE SYSTEM
AT THE UNIVERSITY?"

SUB-GROUP	YES		NO		TOTAL		MEAN
	No.	%	No.	%	No.	%	
Total Sample	213	38.2	344	61.8	557	100.0	1.62
Rank							
Professor	71	36.8	122	63.2	193	100.0	1.63
Associate Professor	42	29.2	102	70.8	144	100.0	1.71
Assistant Professor	69	40.4	102	59.6	171	100.0	1.60
Instructor	27	62.8	16	37.2	43	100.0	1.37
Other Faculty	1	33.3	2	66.7	3	100.0	1.67
Chairman Status							
Chairman	15	29.4	36	70.6	51	100.0	1.71
Not Chairman	195	39.0	305	61.0	500	100.0	1.61
Tenure Status							
Tenured	90	31.6	195	68.4	285	100.0	1.68
Not Tenured	120	44.8	148	55.2	268	100.0	1.55
Utah Degrees							
None	127	36.6	220	63.4	347	100.0	1.63
Undergraduate Only	22	52.4	20	47.6	42	100.0	1.48
At Least One Graduate Degree	60	37.0	102	63.0	162	100.0	1.63
Employment Outside University							
Never	58	40.3	86	59.7	144	100.0	1.60
One to Three Years	64	41.6	90	58.4	154	100.0	1.58
Four to Ten Years	58	36.9	99	63.0	157	100.0	1.63
Eleven Years or More	18	29.5	43	70.5	61	100.0	1.70

Please refer to original Questionnaire for significance of mean

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TABLE 25
THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH FACULTY JANUARY 1971
RESPONSE TO THE FACULTY TENURE SURVEY QUESTION (#28):
"IF YOU ANSWERED THAT THERE IS PRESENTLY A SUBSTANTIAL AMOUNT OF DISCONTENT WITH THE TENURE SYSTEM
WHAT DO YOU PERCEIVE TO BE THE MAIN SOURCE(S) OF THIS DISCONTENT?"

SUB GROUP	Faculty		Students		Adminis- tration		Local Community		Total		Total Respon- dents
	No.†	%	No.†	%	No.†	%	No.†	%	No.†	%	
Total Sample	68	23.0	133	44.9	65	22.0	215	72.6	481	162.5	296
Rank											
Professor	19	18.4	42	40.8	26	25.2	85	82.5	172	166.9	103
Associate Professor	11	15.9	25	36.2	20	29.0	50	72.5	106	153.4	69
Assistant Professor	26	29.2	47	52.8	16	18.0	62	69.7	151	169.7	89
Instructor	11	35.5	18	58.0	3	9.7	14	45.2	46	148.3	31
Other Faculty	0	0.0	1	100.0	0	0.0	1	100.0	2	200.0	1
Chairman Status											
Chairman	5	20.0	8	32.0	6	24.0	20	80.0	39	156.0	25
Not Chairman	63	23.6	128	48.8	55	20.6	188	70.4	434	162.6	267
Tenure Status											
Tenured	25	17.2	53	36.6	37	25.5	111	76.6	226	155.9	145
Not Tenured	42	28.4	80	54.0	27	18.2	102	68.9	251	169.5	148
Utah Degrees											
None	38	21.7	71	40.5	41	23.4	124	70.9	274	156.5	175
Undergraduate Only	6	20.0	16	53.3	5	16.7	26	86.7	50	176.6	30
At Least One Graduate Degree	24	27.6	45	51.7	18	20.7	61	70.1	148	170.1	87
Employment Outside University											
Never	12	15.1	40	50.6	11	13.9	57	72.1	120	151.7	79
One to Three Years	27	31.8	37	43.5	16	18.8	58	68.2	138	162.3	85
Four to Ten Years	20	24.7	38	46.9	23	28.4	63	77.8	144	177.8	81
Eleven Years or More	5	16.7	11	36.7	11	36.7	24	80.0	51	170.1	30

Please refer to original questionnaire for significance of mean.
Any faculty members made multiple responses to this question. Because of this, the percentage refers to the percent of those responding to the question making a given response. This is the reason that the total percentage is greater than 100.0. Note that the total percentage can be interpreted as the mean of the number of responses made by each faculty member. For example, the average person made 1.62 written responses.
†N refers to the number of times item was mentioned in written comment. ## The mean refers to the mean of this distribution

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TABLE 26
 THE DISTRIBUTION, BY SUB-GROUP, OF UNIVERSITY OF UTAH
 FACULTY JANUARY 1971 RESPONSE TO THE FACULTY
 TENURE SURVEY QUESTION (#29):
 "WHAT SUGGESTED PROCEDURES SHOULD BE ADDED
 OR RETRACTED FROM THE PRESENT TENURE SYSTEM?"

SUB-GROUP	PERIODIC REVIEW		ALL OTHER		TOTAL		MEAN
	No.	%	No.	%	No.	%	
Total Sample	60	17.8	278	82.2	338	100.0	4.83
Rank							
Professor	29	21.0	109	79.0	138	100.0	4.67
Associate Professor	15	17.0	73	83.0	88	100.0	4.50
Assistant Professor	12	13.2	79	86.8	91	100.0	5.24
Instructor	4	21.0	15	78.9	19	100.0	5.37
Other Faculty	0	0.0	1	100.0	1	100.0	7.00
Chairman Status							
Chairman	10	30.3	23	69.7	33	100.0	3.94
Not Chairman	50	16.6	252	83.4	302	100.0	4.94
Tenure Status							
Tenured	38	19.9	153	80.1	191	100.0	4.59
Not Tenured	22	15.4	121	84.6	143	100.0	5.11
Utah Degrees							
None	39	18.0	178	82.0	217	100.0	4.79
Undergraduate Only	3	11.5	23	88.5	26	100.0	5.27
At Least One Graduate Degree	17	18.7	74	81.3	91	100.0	4.81
Employment Outside University							
Never	11	14.5	65	85.5	76	100.0	5.17
One to Three Years	23	23.0	77	77.0	100	100.0	4.56
Four to Ten Years	16	16.8	79	83.2	95	100.0	4.59
Eleven Years or More	8	17.0	39	83.0	47	100.0	5.19

Please refer to original Questionnaire for significance of mean

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FACULTY STATISTICS

APPENDIX II

TABLE 1

THE NUMBER AND PERCENT OF FACULTY BY COLLEGE OR AREA
WHO HAVE TENURE STATUS AT THE UNIVERSITY OF UTAH AS OF JANUARY 4, 1971*

College or Area	Total Regular Faculty	Total Regular Faculty Ass't Professor and Higher Ranks	Total Faculty Holding Tenure	Percent Tenured Faculty of:	
				Total Regular Faculty	Tenure Producing Ranks
Business	40	39	23	57.5	59.0
Education	71	58	37	52.1	63.8
Engineering	69	68	45	65.2	66.2
Fine Arts	56	52	32	57.1	61.5
Humanities	128	123	61	47.7	49.6
HPER	20	18	10	50.0	55.6
Law	18	18	11	61.1	61.1
Military Sciences	16	16	0	0.0	0.0
Medicine	208	154	59	28.4	38.3
Mineral Industries	38	38	21	55.3	55.3
Nursing	39	25	10	25.6	40.0
Pharmacy	12	12	3	25.0	25.0
Sciences	114	112	64	56.1	57.1
Social & Behavioral Sciences	88	84	45	51.1	53.6
Social Work	31	31	12	38.7	38.7
University Services (Library & DCE)	55	23	7	12.7	30.4
Administrative Officers	<u>26</u>	<u>26</u>	<u>21</u>	<u>80.8</u>	<u>80.8</u>
Sub-Total	(1,029)	(897)	(461)	(44.8)	(51.4)
Other Faculty Ranks [#] (Non-Tenured)	(861)				
Lecturers	68				
Adjunct	52				
Clinical	600				
Research	100				
Visiting	41				
Teaching Assistants ^c	(544)	—	—	—	—
Total Staff	2,434	897	461	24.4**	51.4

*Data obtained from Academic Vice President's Office.

[#]Data obtained from Faculty Tape, October, 1970.

^cFigures obtained from Academic Vice President's Office Autumn Quarter, 1970.

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**Percentage excludes TA's but based on regular ranks and non-tenured ranks.

TABLE 2
THE NUMBER AND PERCENT OF FULL-TIME FACULTY BY
RANK WHO HAVE TENURE STATUS AT THE UNIVERSITY OF UTAH
AS OF JANUARY 4, 1971*

R A N K	TOTAL FULL-TIME FACULTY#	NUMBER AND PERCENT FULL-TIME FACULTY WITH TENURE	
		No.	%
Professors	216	205	94.90%
Associate Professors	180	125	69.44%
Assistant Professors	266	25	9.39%
Department Chairmen	52	42	80.76%
TOTAL	714	397	55.60%

* FTE data obtained from Records of the Personnel Office, October, 1970.

Full-Time Status is defined to mean faculty who have a 75 percent FTE in their instructional department. Thus, faculty in the University and College Administration are excluded.

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January 27, 1971

TABLE 3

THE NUMBER AND PERCENT OF FULL-TIME FACULTY BY COLLEGE
WITH VARIOUS LENGTHS OF TEACHING EXPERIENCE
WHO DO NOT HOLD TENURE STATUS AT THE UNIVERSITY OF UTAH AS OF JANUARY 4, 1971*

College or Area	7 or More Years Teaching		10 or More Years Teaching	
	No.	%	No.	%
Business	-	-	-	-
Education	1	.14	-	-
Engineering	-	-	-	-
Fine Arts	-	-	-	-
Humanities	1	.14	1	.14
HPER	1	.14	-	-
Law	-	-	-	-
Military Science	-	-	-	-
Medicine	2	.28	1	.14
Mineral Industries	-	-	-	-
Nursing	-	-	-	-
Pharmacy	-	-	-	-
Science	1	.14	1	.14
Social & Behavioral Science	-	-	-	-
Social Work	-	-	-	-
University Services	<u>2</u>	<u>.28</u>	<u>1</u>	<u>.14</u>
Total	8 [#]	1.12	4 [#]	.56
All Full-Time Faculty	714	100.00	714	100.00

*Information on length of teaching experience obtained from the Office of Institutional Studies Faculty Tape. Full-time status of faculty determined from records of the Personnel Office. (October, 1970)

[#]With one exception all of the faculty in this table were instructors until recently. Only individuals holding the rank of Assistant Professor or higher are included in this accounting.

TABLE 4
 FULL-TIME FACULTY AGE 35 YEARS AND OLDER
 WHO DO NOT HOLD TENURE AS A PERCENT OF TOTAL
 FULL-TIME FACULTY AS OF JANUARY 4, 1971*

R A N K	TOTAL FULL-TIME	AGE 35 AND OVER WITHOUT TENURE	
		No.	%
Professors	264	32	12.1%
Associate Professors	226	105	46.5%
Assistant Professors	184	45	24.5%
Sub-Total	714	182	25.5%
Instructors ^{##}	92	34	37.0%
TOTAL	806	216	26.8%

*Tenure data obtained from Academic Vice President's Office. FTE data obtained from records of the Personnel Office, October, 1970. Age derived from Faculty Tape, Office of Institutional Studies.

**Department Chairmen are distributed among the ranks.

[#]The College of Medicine and the Graduate School of Social Work accounts for a sizeable number of these faculty.

^{##}Non-tenured individuals but included for comparison purposes.

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 January 27, 1971

Table 5

Year	Tenure Awarded ¹	Early Tenure ²	Tenure With Appointment ³	Tenure Postponed For One-Year ⁴	Terminal Letters ⁵	Totals
1965	35	4	1		5	45
1966	29	0	0		4	33
1967	38	0	0		5	43
1968	36	4	3	2	4	49
1969	55	7	5		7	74
1970	52	7	2	2	7	70

¹ Faculty members achieve tenure upon completion of probationary period (3 years--associate and full professors, 5 years--assistant professors)

² Tenure awarded before expiration of probationary period

³ Tenure granted at time of appointment (This action requires review by the University Tenure Advisory Com.)

⁴ On the initiative of the University Tenure Advisory Com., probationary period may be extended for one or two years whenever unusual circumstances indicate, in their judgment, that additional time is needed to evaluate fairly the work of the candidate for tenure.

⁵ Providing formal notice of a decision to terminate the individual's appointment, twelve month advance notice is required after the date upon which the notice of termination is served.

ACADEMIC FREEDOM AND THE COURTS

APPENDIX III

MEMORANDUM

SUBJECT: Academic Freedom and the Courts

It is the purpose of this Memorandum to explore the nature and extent of judicial protections available to teaching personnel in state colleges and other educational institutions who are threatened with discharge or other censure where the action is claimed to violate academic freedom. Consideration will be given to the following basic areas:

1. Protection of constitutional rights.
2. Protection against arbitrary discharge for non-tenured faculty members.
3. Procedural due process requirements.
4. The concept of "just cause" for discharge of tenured faculty members.

I. The Exercise of Constitutional Rights by Faculty Members

The question for analysis is to what extent and under what circumstances the Courts will protect public teaching personnel against discharge or other disciplinary measures where the action is claimed to infringe upon constitutional rights.

Two decisions of the United States Supreme Court in recent years, followed by a number of cases in lower federal and state courts, have settled the proposition that public teaching personnel may not be discharged, reduced in rank or compensation, or otherwise disciplined for exercising constitutionally protected rights. In Keyishian v. Board of Regents, 385 U.S. 589 (1967), the United States Supreme Court rejected the traditional distinction in constitutional status between public and private employees which had permitted public employment, including academic employment, to be "conditioned upon the surrender of constitutional rights which could not be abridged by direct government action." Id. at 605. Teachers or other public employees may not "be relegated to a watered-down version of constitutional rights' solely because they are public employees." Nat'l Educ. Ass'n, Protecting Teachers Rights, p. 1 (1970), citing Garrity v. New Jersey, 385 U.S. 493, 500 (1967). The Court in Keyishian stated: "The theory that public employment which may be denied altogether may be subject to any conditions, regardless of how unreasonable, has been uniformly rejected." 385 U.S. at 605-06. Applying the Keyishian mandate in Pickering v. Board of Educ., 391 U.S. 563 (1968), the Court held that a teacher's exercise of his right to speak on issues of public importance could not, absent proof of knowing or recklessly made

statements, furnish the basis for his dismissal.

Under these two cases and the subsequent decisions interpreting them, it is clear that most courts will protect both college and lower level teaching personnel against infringement of their constitutional rights regardless of the presence or absence of tenure, Roth v. Board of Regents, 310 F.Supp. 972, 976 (W.D. Wis. 1970), and regardless of whether employment is terminated during the period of an existing contract or whether termination occurs by non-renewal of an expiring contract. McLaughlin v. Tilendis, 398 F.2d 287, 289 (7th Cir. 1968). Accord, Pred v. Board of Public Instr., 415 F.2d 851 (15th Cir. 1969); Freeman v. Gould Special School Dist., 405 F.2d 1153 (8th Cir. 1969). Contra, Jones v. Hopper, 410 F.2d 1323 (10th Cir. en banc 1969), cert. denied, 397 U.S. 991 (1970) (non-tenured teacher terminable at will for any reason).

The disposition of constitutional claims by academic personnel will be considered in the following areas: intra and extramural speech, association, political activity, civil rights activity, personal appearance, private life-style, and loyalty oaths.

A. Out of classroom speech. In Pickering v. Board of Educ., 392 U. S. 563 (1968), a public high school teacher had been discharged for writing a letter containing some false statements to the editor of a local paper which criticized the Board of Education's handling of past bond proposals designed to raise new school revenues. After a full hearing, the Board of Education determined that the letter had been detrimental to the efficient operation of the schools and that the interest of the schools required the teacher's dismissal. Reviewing the case solely on the question whether the Board's findings were supported by substantial evidence, the State Supreme Court upheld the dismissal. The United States Supreme Court reversed, holding that "absent proof of false statements knowingly or recklessly made, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment." Id. at 574. The court viewed the problem as being:

to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. Id. at 568.

The court noted that no question of maintaining either discipline by immediate superiors or harmony among coworkers was presented, and indicated that to the extent the teacher's statements were true, the institution could limit his right to speak only if it could show that confidentiality and personal loyalty were necessary to the proper functioning of the working relationships involved. Even the fact that the teacher's carelessly false statements may have damaged the personal reputations of his superiors or produced controversy among school personnel and the public were insufficient grounds for limiting his speech.

Since Pickering, other courts considering teacher-speech critical of their employer's policies have reached similar results. Absent proof of reckless falsehood and actual damage therefrom, or the "kind of close working relationships for which it can persuasively be claimed that personal loyalty and confidence are necessary to their proper functioning," Pickering v. United States, supra, at 570, a teacher's criticism of his superiors or his employing institution apparently need not be either fair, accurate, or polite. In Puentes v. Board of Educ., 24 N.Y. 2d 996, 250 N.E. 2d 232 (1969), a high school teacher was suspended without pay for distributing to fellow teachers a stridently critical letter regarding his board of education's failure to renew the contract of a probationary teacher. The New York court found that the inaccuracies contained in the letter were not intentional falsehoods and further found no evidence of any actual or threatened damage to the school system resulting from the letter. Absent proof of either, the Court held that to permit discipline of teachers for harsh or even false criticism in an area where criticism is otherwise permissible would dampen the exercise of free speech and cannot be permitted. See also Nevada v. Board of Regents, 269 P.2d 265 (1954) (professor's inaccurate criticism of college president together with magazine article criticising administrative operating procedures held protected activity).

B. Classroom Speech. The United States Supreme Court has long recognized the importance of free academic inquiry unhampered by fear of political or economic reprisal. As stated by the Court in Keyishian v. Board of Regents, supra:

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. 385 U.S. at 603.

In a thorough discussion of recent case law concerning intramural speech by professors and other teachers, Robert Chanin, writing for the National Education Association, has noted the difficulty of defining the precise perimeters of academic freedom. Nat'l Educ. Ass'n, Protecting Teacher Rights, supra, at p. 11. Particular cases, however, do help to establish guidelines. Teachers may not be prevented from instructing students in the tenets of political philosophies such as Marxism opposing governmental policies. See Keyishian v. Board of Regents, supra; Georgia Conf. of AAUP v. Board of Regents, 246 F. Supp. 553 (N.D. Ga. 1965). Similarly, State statutes prohibiting the teaching of certain subjects have been held constitutionally defective. See, e.g., Meyer v. Nebraska, 262 U.S. 390 (1923) (statute prohibiting teaching of German to students below eighth grade). So too, teachers may not be forced to conform curriculum presentations to the precepts of any particular religion or dogma. See Epperson v. Arkansas, 393 U.S. 97 (1968) (state statute prohibiting teaching of evolution).

In one recent case, the United States Court of Appeals for the First Circuit reversed the suspension of a high school English teacher who had assigned his class an article containing a term described by the court as "a vulgar term for an incestuous son" and who refused to state as required by the school board that he would never again use the term in his classroom. Keefe v. Geanokos, 418 F.2d 359 (1st Cir. 1969). The court found the bar against distributing a scholarly article which happened to contain an offensive term intolerable in an academic setting, commenting that:

If the answer were that the students must be protected from such exposure, we would fear for their future. We do not question the good faith of the defendants in believing that some parents have been offended. With the greatest of respect to such parents, their sensibilities are not the full measure of what is proper education. Id. at 361-62.

But see Parker v. Board of Educ., 237 F.Supp. 222 (D. Md. 1965), aff'd, 348 F.2d 464 (4th Cir. 1965), cert. denied, 382 U.S. 1030 (1966) (upholding non-renewal of non-tenured teacher's contract where teacher assigned Huxley's Brave New World in violation of school regulation.)

On the other hand, teachers are not entitled freely to intrude their own personal views into the classroom. As stated by one writer,

the use of his classroom by a teacher or professor deliberately to proselytize for a personal cause or knowingly to emphasize only that selection of data best conforming to his own personal biases is far beyond the license granted by the freedom of speech and furnishes precisely the just occasion to question his fitness to teach. W. Van Alstyne, The Constitutional Rights of Teachers and Professors, 1970 Duke L.J. 841, 856.

In Goldwasser v. Brown, 417 F.2d 1169 (D.C. Cir. 1969), cert. denied 397 U.S. 922 (1970), for example, the District of Columbia Circuit upheld over a constitutional claim the dismissal of a civilian instructor employed by the Air Force Language School who introduced discussion of controversial and unrelated subjects such as religion, politics, and his personal experience of racial discrimination into classroom hours. See also, In Re Charles Jones, N.Y. Comm'r of Educ. No. 1895 (Sept. 23, 1970) (dismissal upheld for repeated use of classroom by teacher to interject his personal views on political issue unrelated to regular subject matter).

C. Association. A number of recent cases have considered the constitutional dimensions of restrictions upon teacher-associational activities. In Keyishian v. Board of Regents, supra,

the United States Supreme Court invalidated a New York State law disqualifying from public educational employment any person belonging to any organization advocating the overthrow of the government by force or violence. The court held that mere membership without participation in unlawful activities does not present the kind of threat to public service that would justify interference with an individual's right of free association.

Recent decisions involving teacher participation in union activity demonstrate a clear trend toward recognition of a teacher's right to engage in collective bargaining and related activities. See, e.g., Indianapolis Educ. Ass'n v. Lewallen, No. 17808, Slip Op. at 3 (7th Cir. 1969) (right of teachers to associate for purpose of collective bargaining held protected by first and fourteenth amendments). Other cases holding teachers' right to participation in collective bargaining and other union activity constitutionally protected and holding claims of interference cognizable under the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1964) include: American Fed. of State, County & Municipal Employees v. Woodward, 406 F.2d 137 (8th Cir. 1969); McLaughlin v. Tilendis, 398 F.2d 287 (7th Cir. 1968); Hanover Township Federation of Teachers v. Hanover Comm. School Corp., 318 F.Supp. 757 (N.D. Ind. 1970).

D. Political Activity. A governmental interest in preserving the integrity of public service by divorcing public employment from partisan political activity has served as justification for state imposed limitations upon the political activities of public employees. United Public Workers v. Mitchell, 330 U.S. 75 (1947) (upholding constitutionality of Hatch Act against first amendment challenge). A similar rationale has been advanced for limiting the political activities of teachers. See Jones v. Board of Control, 131 So. 2d 713 (Fla. 1961) (upholding restriction on seeking office applied to law professor). Mitchell and its progeny, however, are of questionable validity today in light of the Keyishian and Pickering holdings that a compelling state interest is necessary to justify conditions upon public employment which interfere with the exercise of constitutionally protected rights. Thus, several recent decisions indicate an increasing judicial reluctance to bar teachers from all forms of political activity. In Montgomery v. White, Civ. Action No. 4933, Slip Op. (E.D. Tex. Oct. 24, 1969), for example, the court recognized the possibility of a legitimate school board interest in protecting its educational activities against undue political activity substantially disruptive of necessary discipline, but nevertheless struck down a school board's ban upon all political activity by teachers as inconsistent with first amendment freedoms. See also, DeStefano v. Wilson, 96 N.J. Super. 592, 233 A.2d. 682 (1967) (statute proscribing all forms of political activity by teachers struck down); Minelly v. Oregon, 242 Ore. 490, 411 P.2d 69 (1966) (statute prohibiting public employees from running for office held unconstitutional). But see, State Employees v. Wisconsin Board, 298 F.Supp. 339 (W.D. Wis. 1969) (relinquishing right to seek partisan political office may constitutionally be

made a condition of employment).

E. Civil Rights Activity. Several recent decisions support the right of teaching personnel to engage in civil rights activity promoting social or political reform. In Board of Trustees v. Davis, 396 F.2d 730 (8th Cir. 1968) the United States Court of Appeals for the Eighth Circuit found a claim cognizable under the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1964), in a complaint by a former college faculty member alleging that his dismissal was a "direct consequence of his activities relating to the abolition of corporal punishment in the Arkansas State Penitentiary and the ensuing publicity through the news media." Id. at 731. Similarly, in Johnson v. Branch, 364 F.2d 177 (4th Cir. 1966), cert. denied, 385 U.S. 103 (1967), the Fourth Circuit ordered the reinstatement of a non-tenured faculty member whose contract had not been renewed because of (as the court found) her activity in demonstrations against racial discrimination. Accord, Rackley v. School Dist. No. 5, 258 F.Supp. 676 (D.S.C. 1966). Cf. Rosenfield v. Malcolm, 65 Cal. 2d 559, 421 P.2d 697, 55 Cal. Rptr. 505 (1967) (civil rights activity by health officer held protected); Rainey v. Jackson State College, 39 U.S.L.W. 2391 (5th Cir. Dec. 22, 1970) (claimed discharge of professor for testifying for defense in obscenity case held cognizable under Civil Rights Act.)

F. Personal Appearance. The courts have viewed with suspicion regulations or other attempts at dictating norms for the personal appearance of faculty members.

Several recent cases have struck down regulations on hair length and style on constitutional grounds. See Breen v. Kahl, 296 F.Supp. 702 (W.D. Wis. 1969) (public school regulation of student hair length held unconstitutional under due process clause of fourteenth amendment); Myers v. Arcata Union High School Dist., 75 Cal. Rptr. 68 (Cal. App. 1969) (school hair length regulation held void for vagueness under fourteenth amendment). Finding the wearing of a beard a form of "symbolic speech," the California Court of Appeals ordered reinstated a teacher who was dismissed from regular classroom duties solely because he wore a beard. Finot v. Pasadena City Board of Educ., 250 Cal. App. 2d 189, 58 Cal. Rptr. 520 (1967). See also, Lucia v. Duggan, 303 F.Supp. 112 (D. Mass. 1969), where a teacher dismissed for wearing beard was ordered reinstated with back pay. The Massachusetts court held that upholding the dismissal would require an announced policy against beards, notice of violation thereof, and a fair hearing to determine whether wearing the beard had materially disrupted the teacher's classroom or the performance of his duties. Id. at 56. See also, Braxton v. Board of Public Instruc., 303 F.Supp. 958 (M.D. Fla. 1969) (dismissal of black teacher refusing to shave off goatee held arbitrary, unreasonable, based on personal preference, and infected with "institutional racism"). But Cf. Alberda v. Noell, 39 U.S.L.W. 2506 (E.D. Mich. Feb. 19, 1971) (student and teacher hairstyle regulation; held, plaintiffs must exhaust state remedies--no substantial federal

question).

See also Parolisi v. Board of Examiners, 55 Misc. 2d 546, 285 N.Y.S. 2d 1936 (Sup. Ct. 1967) (reversing decision to deny teacher license because of obesity).

G. Private Life Style. Unless aspects of a teacher's private life can reasonably be found either to bear upon his professional qualifications or to have a substantial effect upon the operation of the educational institution involved, the courts are not likely to support discharge for reasons based upon his private life. Nat'l Educ. Ass'n, supra, at p. 17. Thus, in Morrison v. State Bd. of Educ., 1 Cal. 3d 214, 416 P.2d 375 (1969), the California Supreme Court reversed the termination of a teacher who had engaged in a homosexual relationship with another teacher. See also, McConnel v. Anderson, 316 F.Supp. 809 (D. Minn. 1970) (state university may not constitutionally reject employment application by teacher on basis of his declared homosexuality). Cf., Bruns v. Pomerleau, 319 F.Supp. 58 (D. Md. 1970) (application for employment as policeman may not be denied solely because applicant is a nudist). Meeting with similar failure was an attempt to terminate a teacher on the ground that his use of "vulgar and offensive" language in a letter to a former student constituted immorality. Jarvella v. Willoughly-Eastlake City School Dist., 12 Ohio Misc. 288, 233 N.E.2d 143 (Ct. Comm. Pl. 1967).

H. Loyalty and Other Oaths. Oaths requiring a teacher to forswear activities or associations he is otherwise constitutionally entitled to pursue will not withstand constitutional challenge. W. Van Alstyne, supra, at 847. Thus, a loyalty oath precluding membership in a "subversive" organization cannot, without proof of specific intent to further the organization's illegal aims, be made a condition of employment. Keyishian v. United States, 385 589 (1967). Similarly, the United States Supreme Court in Shelton v. Tucker, 364 U.S. 479 (1960) struck down a requirement that a teacher reveal every association with which he had had a substantial affiliation during the past five years, on the ground that such a disclosure requirement substantially inhibited the exercise of constitutionally protected speech. See also, Stewart v. Washington, 301 F.Supp. 610 (D.D.C. 1969) (sustaining a teacher's challenge to loyalty oath for employees of the District of Columbia); Champ v. Board of Public Instruction, 368 U.S. 278 (1961) (rejecting requirement that teacher swear that he has never lent "aid, advice, counsel or influence to the Communist Party"); Wieman v. Updegraff, 344 U.S. 183 (1952) (not now and has not within recent past been member of or indirectly affiliated with Communist Party or front organization).

From a review of various loyalty oath cases, Van Alstyne has concluded that "In all likelihood the State may go no further than to require that one be willing to affirm a general commitment to uphold the Constitution and faithfully to perform the duties of

the position he holds." W. Van Alstyne, supra., at 847.

II. Protection Against Arbitrary Discharge for Non-Tenured Faculty Members.

The extent of judicial protection available to non-tenured faculty members against arbitrary discharge is somewhat uncertain. Although the principle that faculty members may not be discharged or otherwise disciplined in violation of first amendment freedoms is clearly established, the question of whether the constitution protects against arbitrary, capricious, or unreasonable discharge or non-retention absent a violation of first amendment rights remains unsettled. See, Roth v. Board of Regents, supra., at 976. While past decisions of the Supreme Court have recognized that "constitutional protection does extend to the public servant whose exclusion. . . is patently arbitrary," Wieman v. Updegraff, 344 U.S. 183, 192 (1957), the Court in Cafeteria Workers v. McElroy, 367 U.S. 886 (1960) stated that "the interest of a government employee in retaining his job can be summarily denied. It has become a settled principle that government employment, in the absence of legislation, can be revoked at the will of the appointing officer." Id. at 896-97 (dicta).

In McElroy, 367 U.S. 886 (1960), a five-four decision, the Court upheld the termination of a cook employed by a private firm operating a food concession at the Naval Gun Factory under the following circumstances: Access to the installation was dependent upon having an identification badge; the cook was required to surrender her pass for the reason that she no longer met the installation's security requirements, thereby requiring termination of her employment. After balancing the interests of the cook against those of the governmental function involved, the court sustained the termination, holding that the cook was not entitled to notice and a hearing when the reason advanced for her exclusion was "entirely rational and in accord with the contract" between the government and her private employer. Id. at 898.

In a recent opinion, the United States Court of Appeals for the Tenth Circuit cited McElroy for the proposition that governmental employment is terminable at will and held, in effect, that absent legislation to the contrary, a non-tenured faculty member may be denied retention for any reason whatsoever, including, apparently, retaliation for the exercise of a constitutionally protected right. Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969). In Jones, a non-tenured college professor was informed that his teaching appointment would not be renewed. The professor claimed the non-retention resulted from his engagement in various constitutionally protected activities, including the founding of an independent faculty-student publication containing articles criticizing the war in Viet Nam, commenting on labor problems and pacifism, and an article objecting to monitored classrooms. Id.

at 1326. Citing a Colorado statute giving the College Board of Trustees "power to. . . fail to renew contracts of employees and other subordinates," Id. at 1328, and noting the expiration of the professor's contract by its own terms, the Court held that the complaint failed to allege the infringement of any constitutionally protected right. "The provision [of Colorado law cited above] specifically denies an expectancy of continued employment; therefore, absent an expectancy, there could be no interest." Id. at 1329 (Citations omitted).

The Fifth and Eighth Circuits have also adopted the lack of expectancy argument in denying constitutional protection for non-tenured faculty members against arbitrary discharge. Pred v. Board of Public Instr., 415 F.2d 851 (5th Cir. 1969); Freeman v. Gould Special School Dist., 405 F.2d 1153 (8th Cir. 1969). The Fifth Circuit, however, has recognized that the continued renewal of short term contracts as well as general institutional policies may create the requisite expectancy. Lucas v. Chapman, 430 F.2d 945, 947 (5th Cir. 1970); Ferguson v. Thomas, 430 F.2d 852 (5th Cir. 1970).

Other courts, however, have rejected the expectancy argument entirely and have found a constitutionally protected interest against arbitrary non-retention, holding that dismissal or non-retention of faculty members may not rest on a basis wholly unsupported in fact or wholly without reason. Orr v. Trintner, 318 F. Supp. 1041, 1046 (S.D. Ohio 1970); Roth v. Board of Regents, 310 F. Supp. 973 (W.D. Wis. 1970). Perhaps the leading case in point is Roth v. Board of Regents, supra.

In Roth, a non-tenured assistant professor who had been involved in controversies with the administration was informed that he would not be offered an employment contract for the following year. No reasons for the decision were given and no hearing was either offered or requested. The complaint alleged that the non-retention was a retaliation against plaintiff for his expressions of opinion and that the decision was not made under definite or ascertainable standards.

For the purpose of determining whether the constitution affords substantive protection against arbitrary non-retention, the court assumed that no first amendment problem was present. Considering itself bound by McElroy to base resolution of the question upon a balancing of the interests involved, the court reviewed the university's interests as follows:

I am called upon to consider the interest of the university in assembling and preserving a community of teachers and scholars. I am to consider how vital it is to this interest that during a relatively short initial interval, the university be free arbitrarily to decide not to retain a professor, so long as its decision is not based upon his exercise of freedoms

secured to him by the Constitution. The concept of tenure obviously enjoys a rational basis, as well as a traditional basis. It is reasonable that there be a time in which to observe a new teacher and scholar and that the university retain during that time a considerable latitude in deciding whether he should remain. It is reasonable that after a period of time, or after the newcomer has won a certain measure of acceptance reflected in his academic rank, he should acquire rather strong protection against non-retention; such an arrangement is conducive to productive and perhaps controversial effort. Thus it is reasonable that there be available a very wide spectrum of reasons, some subtle and difficult to articulate and to demonstrate, for deciding not to retain a newcomer or one who has not yet won sufficient respect from his colleagues. And it is reasonable that thereafter this available spectrum of reasons be sharply narrowed and confined to those amenable to articulation or demonstration. Id. at 978-79.

The court also considered the practical effect upon the universities of a constitutional rule forbidding non-retention on such an arbitrary basis:

.... in practice will the university become so inhibited that the available spectrums of reasons for non-retention in the two situations will merge, the distinction between tenure and absence of tenure will shrink and disappear, and the university will be unable to rid itself of newcomers whose inadequacies are promptly sensed and grave but not easily defined? It will not do to ignore this danger to the institution and to its central mission of teaching and research. Id. at 979.

Against these interests of the educational institution involved, the court balanced the interest of the individual professor, concluding that to permit his non-retention where the "deciding authority is utterly mistaken about a particular point of fact," id. at 979, or when the basis for non-retention is wholly without reason, would be unjust. The court recognized the severe potential damage to the non-retained professor and noted that no interest of the university would be directly served by permitting wholly arbitrary non-retention, holding:

The balancing test of *Cafeteria Workers v. McElroy* compels the conclusion that under the due process clause of the Fourteenth Amendment the decision not to retain a professor employed by a state university may not rest on a basis wholly unsupported in fact, or on a basis wholly without reason. Id. at 979.

The court emphasized that this standard was intended to be considerably less rigid than the standard of "cause" applied to termination of tenured faculty members:

Unless this substantial distinction between the two standards is recognized in case-by-case application of the constitutional doctrine here enunciated, the rationale for the underlying doctrine will be gravely impaired. To be more direct, in applying the constitutional doctrine, the court will be bound to respect bases for non-retention enjoying minimal factual support and bases for non-retention supported by subtle reasons.

III. Procedural Due Process Requirements.

Whatever substantive protections that are available for the protection of teacher rights are likely to be meaningless without procedural safeguards designed to ensure their implementation. As noted by one writer, "Post-termination judicial remedies for teachers, like post-suspension remedies for students or post-eviction remedies for tenants, are often simply too little and too late." W. Van Alstyne, supra. at 860 (citations omitted).

In recognition of this need, procedural guarantees for faculty members derive from several sources, including statutory and contractual tenure systems, and, to an increasing extent, the due process clause of the Fourteenth Amendment.

Statutory tenure systems in the majority of states applicable to primary and secondary school districts but not to public universities establish a procedure for discharge or demotion. Note, Developments in the Law--Academic Freedom, 81 Harv. L. Rev. 1045, 1086 (1968). Typically, these statutory tenure systems require written notice of intent to discharge or demote together with a statement of reasons. The teacher may then request an open or closed hearing before the school board with the opportunity to be represented by counsel, to present evidence and to cross-examine witnesses under oath. Some form of appeal is also provided. Id. In a variety of public, private, and sectarian educational institutions, tenure systems providing procedural guarantees have been adopted by the governing board or by regulation or by-law. Note, 81 Harv. L. Rev. 1045, 1100 (1968). Institutional tenure regulations, however, may be denied judicial enforcement on the theory that the rules illegally inhibit the power of the appointing authority to dismiss without cause. E.g., Worzella v. Board of Regents of Educ., 77 S. D. 447, 93 N. W. 2d 411 (1958) (institutional system requiring just cause for dismissal of tenured faculty member denied enforcement as unlawfully limiting power of board of trustees).

A third source of procedural guarantees for non-tenured members and for teachers employed by institutions having no tenure system is the due process clause of the Fourteenth Amendment. Recent case law demonstrates a possible trend toward recognition of constitutionally compelled procedural guarantees for faculty members involved in discharge proceedings. Although the Supreme Court has not yet clearly held that faculty members, tenured or non-tenured, are entitled to procedural due process, support for the proposition may be found in several opinions. In Slochower v. Board of Higher Educ., 350 U.S. 551 (1956), for example, the Court held that the summary dismissal of a professor at a public college for refusing on fifth amendment grounds to answer a question relating to his official conduct violated due process. The court found an unconstitutional unfairness in the proceedings leading to the professor's discharge, commenting that:

This is not to say that Slochower has a constitutional right to be an associate professor of German at Brooklyn College. The State has broad powers in the selection and discharge of its employees; and it may be that proper inquiry would show Slochower's continued employment to be inconsistent with a real interest of the State. But there has been no such inquiry here. We hold that the summary dismissal of appellant violates due process of law. Id. at 559.

This same case was cited by the United States Supreme Court only last year for the proposition that procedural due process must be afforded one who faces discharge from public employment. W. Van Alstyne, supra. at 864, citing Goldberg v. Kelly, 397 U.S. 254, 262-63 (1970) (dicta). But see Cafeteria Workers v. McElroy, 367 U.S. 886 (1960) (military regulation construed to permit discharge without notice or hearing). Despite the lack of direct endorsement by the Supreme Court, the basic premise that some procedural safeguards are necessary to the effective implementation of teachers' substantive rights and are thus constitutionally compelled has been recognized by a number of lower federal courts. See e.g., Roth v. Board of Regents, 310 F. Supp. 972 (W.D. Wis. 1970) (notice and hearing if requested required for non-retention of non-tenured college faculty member); Gouge v. Joint School Dist., 310 F. Supp. 984 (W.D. Wis. 1970) (notice and hearing required for non-retention of public high school teacher).

In reaching its conclusion that procedural safeguards were constitutionally required, the court in Roth v. Board of Regents, supra, noted that "Substantive constitutional protection for a university professor against non-retention in violation of his First Amendment rights or arbitrary non-retention is useless without procedural safeguards." Id. at 979-80.

With respect to the type of procedure required, the Court in Roth held that "minimal procedural due process includes a statement

of the reasons why the university intends not to retain the professor, notice of a hearing at which he may respond to the stated reasons, and a hearing if the professor appears at the appointed time and place." Id. at 980. At such a hearing the professor must have a reasonable opportunity to submit evidence relevant to the stated reasons. The court further held that the burden of going forward and the burden of proof rests with the professor, saying:

Only if he makes a reasonable showing that the stated reasons are wholly inappropriate as a basis for decision or that they are wholly without basis in fact would the university administration become obliged to show that the stated reasons are not inappropriate or that they have a basis in fact." Id.

Other decisions requiring procedural safeguards include: Orr v. Trintner, 318 F. Supp. 1041, 1046 (S.D. Ohio 1970) (termination of non-tenured high school teacher requires statement of reasons, notice, hearing and written decision thereon); Ferguson v. Thomas, 430 F.2d 852 (5th Cir. 1970) (tenured college professor who opposed termination for cause must be given notice of reasons, list of witnesses, and hearing before academically expert and impartial tribunal); Lucas v. Chapman, 430 F.2d 945 (5th Cir. 1970) (non-tenured college professor contending non-renewal of contract violates first amendment rights must have notice and hearing); Gouge v. Joint School Dist. No. 1, 301 F. Supp. 984 (W. D. Wis. 1970).

Some courts, however, have refused to find procedural guarantee constitutionally compelled for non-tenured faculty members. See Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969) (neither notice nor hearing required for termination of non-tenured faculty member); Lucas v. Chapman, supra (no procedural requirements for non-tenured faculty unless claimed infringement of first amendment rights); Drown v. Portsmouth School Dist., 39 U.S.L.W. 2371 (1st Cir. 1971), pet. for cert. filed, 39 U.S.L.W. 3501 (May 11, 1971) (non-retention of non-tenured teacher requires statement of reasons but no administrative hearing).

IV. The Concept of "Just Cause" for Termination of Tenured Faculty Members.

State statutes and institutional policies establishing tenure systems for teachers commonly provide that tenured teachers serve " ' during good behavior and efficient and competent service ' until some specified age is reached, at which time . . . [they] may be retired or continued without tenure." Note, Developments in the Law--Academic Freedom, 81 Harv. L. Rev. 1045, 1095 (1968). The tenure statutes and individual systems usually specify causes justifying dismissal. Frequently included grounds are the following: incompetency, insubordination, immorality, neglect of duty and physical or

mental unfitness. Note, 81 Harv. L. Rev., supra. at 1095. Other causes sometimes specified include "cruelty, drunkenness, conduct unbecoming a teacher, conviction of a felony or a crime involving moral turpitude, or failure to give evidence of professional growth," Id., and some catch-all category such as "other sufficient cause."

Cases finding sufficient cause for dismissal of tenured faculty members include the following: Scott v. Board of Educ., 20 Ill. App. 2d 292, 156 N.E. 2d 1 (1959) (continued public intoxication resulting in public scandal); Tracy v. School Dist. No. 22, 70 Wyo. 1, 243 P.2d 932 (1952) (drinking on school grounds); Gover v. Stovall, 237 Ky. 172, 35 S.W. 2d 24 (1931) (male teacher entering schoolgrounds at night with woman under suspicious circumstances); Jenkins v. Board of Educ., 294 F.2d 260 (D.C. Cir. 1961) (per curiam) (dismissal of principal upheld even where principal acquitted in criminal proceedings charging "conduct against morality"); Palo Verde Sch. Dist. v. Henesy, 88 Cal. Rptr. 570, 9 Cal. App. 3d 967 (1970) (tenured junior college professor's dismissal for removing public address speaker from classroom and for repeated use of vulgar language and gestures upheld); Goldsmith v. Board of Educ., 66 Cal. App. 157, 225 P. 783 (1924) (advocating election of particular candidate for office of superintendent of schools).

Cases finding insufficient cause generally raise constitutional issues and are discussed in other sections of this memorandum.

CONCLUSION

It is apparent from an analysis of the Keyishian and Pickering decisions and from the subsequent cases interpreting them that the courts have moved steadily toward the development of substantive constitutional protections for academic personnel, particularly with regard to first amendment freedoms. Whether or not the constitution protects against arbitrary discharge faculty members who have not attained tenure status or who are employed by institutions having no tenure system, however, is still unclear. Similarly unsettled is the question whether the constitution compels due process in terminating academic personnel, and if so, what type of procedure is required.

Respectfully submitted,

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